1853

SUPREME COURT OF THE UNITED STATES.

No. 277.

HENRY SHELDON, NELSON CLEMENTS, AND EDWARD A. SHELDON, Plaintiffs in Error,

vs.

JAMES NICHOLSON, THOMAS C. MOORE, AND REBECCA H. NICHOLSON.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

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IN the District Court of the United States, holding and exercising Circuit Court powers for the District of Texas, sitting at Austin, for the November term, A. D. 1855.

HENRY SHELDON, NELSON CLEMENTS, and EDWARD A. SHELDON, Complainants in Error,
vs.
JAMES NICHOLSON, REBECCA H. NICHOLSON, and THOMAS C. MOORE, Defendants in Error.
} No. 1. Chancery.

Transcript of the Record.

The United States of America, District of Texas, at Austin, to wit:

At a District Court of the United States, having and exercising the powers and jurisdiction of a Circuit Court of the same, for the District of Texas, begun and held at the city of Austin, in said district, on the third Monday in November, in the year of our Lord one thousand eight hundred and fifty-five: Present, the Honorable John C. Watrous, Judge of said district; Benjamin McCulloch, Esq. United States Marshal; and William P. De Normandie, Clerk. Among other were the following proceedings, to wit:—

HENRY SHELDON and Co.
vs.
JAMES NICHOLSON and THOMAS C. MOORE.
} No. 1. Chancery.

Be it remembered, that heretofore, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and fifty-three, the said Henry Sheldon and Company, composed of Henry Sheldon, Nelson Clements, and Edward A. Sheldon, the complainants, by their attorneys and solicitors, Hamilton and Chandler, filed in the clerk's office of the District Court of the United States for the District of Texas, at Austin, upon the Chancery side of the court, their bill in Chancery, complaining against James Nicholson and Thomas C. Moore, which bill is endorsed, to wit:—

File No. 1.

HENRY SHELDON & Co., Compl'ts,
vs.
JAMES NICHOLSON and THOMAS C. MOORE, Def'ts.

Filed July 1st, 1853.

W. P. DE NORMANDIE, Clerk.
HAMILTON & CHANDLER, Sol's.

And which bill is in the words, terms, and figures following, to wit:—

(*Bill.*)

The U. S. of America, District of Texas. Fall term, 1853.

To the Honorable John C. Watrous, Judge of the United States District Court for the District of Texas. Your orators, Henry Sheldon, Nelson Clements, and Edward A. Sheldon, former partners in the mercantile business, in the city of New York, trading under the firm, name, and style of Henry Sheldon & Co., and who are now resident citizens of the said city, and State of New York, complainants, complaining of James Nicholson and Thomas C. Moore, defendants, and resident citizens of the county of Bastrop, in said State of Texas, showeth unto your honor: 1st. That James Nicholson, a resident citizen of the county of Bastrop, in said State of Texas, became indebted to your orators for goods, wares, and merchandise purchased by him, the said Nicholson, of them, your orators, and for insurance and other moneys paid for him, and at his instance and request; and was further indebted to them as aforesaid, on the 13th day of March, 1851, in the sum of ten thousand six hundred and ninety-one $\frac{6}{100}$ dollars, for which amount he, the said Nicholson, subsequently, to wit, on the 30th day of September, 1851, executed his note in favor of your orators, payable one day after date, upon which said note your orators brought suit against the said James Nicholson in the District Court, for the said county of Bastrop, and at the fall term, 1852, thereof, to wit, on the 20th day of November, recovered a judgment against him for the sum of eleven thousand six hundred and sixty and $\frac{4}{100}$ dollars, for their principal debt and interest, and the sum of eight $\frac{70}{100}$ dollars costs of suit, upon which judgment execution has been issued, and returned by the sheriff of the aforesaid county of Bastrop, no property found. A certified copy of said judgment and execution is hereto appended, marked Exhibit No. 1, and prayed to as a part of this bill.

2d. That after the said indebtedness of the said Nicholson to your orators, and before the execution of said note, to wit, on or about the day of , 1851, the said Nicholson, being then largely indebted to others besides your orators, to wit, to the amount (including the amount due your orators) of twenty thousand dollars, and being then in the possession of goods, wares, and merchandise, at his storehouse in the said town of Bastrop, to the amount of eighteen thousand dollars, at the cost, rate, and expenses of transportation theron, sold said goods, wares, and merchandise, together with certain real estate situate in said town of Bastrop, which will be hereafter particularly pointed out and described, to one Thomas C. Moore, a resident citizen of said county of Bastrop.

3d. That at the time of sale by the said Nicholson to said Moore, he, the said Nicholson, was in failing circumstances, and unable to meet the debts that were then due against him and being presented for payment, all of which, as your orators are advised and believe, was well known to the said Thomas C. Moore, and your orators state

particularly that the said Moore knew of the indebtedness of said Nicholson to your orators; that it was at the suggestion of the said Moore, and upon his advice, that the said Nicholson made the transfer of said goods, wares, and merchandise and real property, in fraud, as your orators believe and charge, of their rights as creditors; that for the purpose of defrauding your orators of their debt, the said James Nicholson and Thomas C. Moore colluded together in the following manner: The said Thomas C. Moore proposed to take the stock of goods at a discount from New York prices of 30 per cent., giving to the said Nicholson small notes due at different times, and that whatever profit might be made off said goods by said Moore should be shared between said Nicholson and said Moore; and upon the said terms and understanding, the said goods were transferred to the said Moore by the said Nicholson, and at the same time the said Nicholson transferred to the said Moore two certain lots in the said town of Bastrop, known and distinguished in the plan of said town as follows, to wit: Lot No. , in block No. , with the improvements thereon, and also town lot No. , with the improvements thereon, which two lots and improvements your orators are advised and believe and charge, were worth at the time of said transfer the sum of two thousand dollars; that said transfer of said lots were made without any consideration whatever, passing from said Moore to said Nicholson, and with a view to defraud the creditors of the said Nicholson; or if there was any consideration therefor, it was an inconsiderable amount due from the said Nicholson to some third party, for which said Moore was security, and which amount has since been paid off by the said Nicholson, and that the said Moore now holds said lots without any consideration, and in fraud of your orators' rights as creditors.

4th. That the amount of notes given by the said Moore to the said Nicholson, for said goods, wares and merchandise, and for said two lots, amounted to the sum of eight thousand dollars only, to be paid in different instalments, without interest, upon any of said payments. Thus your orators charge that twelve thousand dollars' worth of property passed from the said Nicholson into the hands of the said Moore without consideration and in fraud of your orators' rights.

5th. That said Moore, upon the consummation of said fraudulent contract, advised said Nicholson to make an assignment of his effects for the benefit of his creditors, and to withhold from his trustee two of the notes for five hundred dollars each which he, the said Moore, had executed to the said Nicholson for the transfer of said goods, wares and merchandise and lots as aforesaid, and further advised him, the said Nicholson, to retain said notes out of the general surrender for the benefit of his creditors, and to appropriate them to his, the said Nicholson's, private benefit; all which was done by the said Nicholson.

6th. And your orators aver and charge that by reason of the collusion and fraud of the said Nicholson and Moore, they have been prevented

from realizing their said debt or any portion thereof. That the market price of said goods, wares and merchandise in the town of Bastrop was at least fifty per cent. upon the New York cost, and so your orators charge that the said goods, wares and merchandise were actually worth, at the time of the transfer as aforesaid, the sum of twenty-seven thousand dollars. That the said James Nicholson had no other visible or tangible property besides that conveyed to the said Moore as aforesaid out of which your orators could make their said debt or any portion thereof, and are now left remediless unless by the interposition of your Honor's court in the premises.

Your orators aver and charge particularly that said conveyance of said goods, wares and merchandise was made by the said Nicholson to the said Moore when the said Nicholson was in failing circumstances, which was fully known to said Moore. That the amount for which the said Moore executed his notes to the said Nicholson was less than one-half the just value and market price of said goods. That there was a secret contract and understanding between said parties that they were to share whatever profit should be made upon said fraudulent purchase. That there was no consideration passed from the said Moore to the said Nicholson for the two lots and improvements situate in the said town of Bastrop as aforesaid, and that they are now fraudulently held by the said Moore with a view to defeat the rights of your orators and other creditors of the said Nicholson. That the said Moore further colluded with the said Nicholson, and aided and advised him the said Nicholson to withhold two five hundred dollar notes which he the said Moore had executed for the said goods, from a general surrender which he the said Nicholson pretended to make of his assets for the benefit of his creditors, shortly after said fraudulent conveyance. (A.) That the said Moore has in manner aforesaid, and in divers other ways, aided and abetted the said Nicholson in defrauding your orators of their just rights. The said Nicholson having no other property out of which to make their said debt or any portion thereof, and he the said Nicholson having in his said assignment preferred other creditors to more than the amount of the assets which were placed in the hands of the trustee appointed. That said Moore has never accounted or paid the said Nicholson any portion of said profits upon said fraudulent purchase. Wherefore, by reason of the aforesaid fraudulent actings and designs of the said Moore your orators are advised and believe that he is liable to them for the amount of their said judgment against said Nicholson.

Wherefore, the premises considered, your orators pray that the said parties, the said James Nicholson and the said Thomas C. Moore, both of whom are resident citizens of the said county of Bastrop, in the State of Texas, may be made parties defendant hereto, and severally required to make answer hereto within the time required by law and the rules of your honor's court, in your honor's said court to be holden at the city of Austin, in the county of Travis, on the

third Monday in November next. That they severally be required to make full answer to each and every allegation herein contained upon their respective corporal oaths; and that the said Moore be required, in addition to the answers which he may make to the foregoing charges, to answer and set forth what amount he paid for said goods; what amount of goods did you receive from the said Nicholson at New York prices? what was the amount of the account of stock taken at the time you purchased them? and attach to your answer the original invoices, and also the account of stock taken at the time of the said transfer; at what profit did you sell said goods, or any portion of them, upon the prices paid by you; or at what advance upon New York prices? Please bring into court your books of sale. And let each of them answer, whether the said Moore has paid to the said Nicholson any portion of the profits made by him, the said Moore, upon said purchase; and that the said Nicholson be required to state whether or not the said Moore knew that he, Nicholson, was in failing circumstances at the date of the aforesaid pretended sales of goods, wares, and merchandise, and the aforesaid lots and improvements in the town of Bastrop, and particularly whether the said Moore knew of the indebtedness of him, the said Nicholson, to your orators at the date of said purchase; did you not inform the said Moore that you purchased a large portion of the goods, wares, and merchandise that you transferred to him from your orators, and that you then owed your orators for the same? State the amount of goods you transferred to him at New York costs and charges, and what per cent. they were worth in Bastrop over and above the cost and charges. Upon the final hearing of this cause, your orators pray for a judgment and decree of your honor's court, that the aforesaid sale, or pretended sale, from the said Nicholson to the said Moore, was a fraud upon the rights of your orators as creditors as aforesaid, and for a judgment and decree against the said defendants for their principal debt, interest, and costs of this action; and especially for a judgment and decree against the defendant, Thomas C. Moore, for their principal debt, interest, and costs of suit. They further pray, that the conveyance of the said Nicholson to said Moore of said two lots and improvements in the town of Bastrop may be decreed to be fraudulent and void; that the same be ordered to be sold in satisfaction of your orator's said judgment and for all such other and further relief in the premises as to equity and good conscience may seem meet; and, as in duty bound, they will ever pray, &c.

HAMILTON & CHANDLER,
Solicitors for Compl'ts.

Exhibit No. 1.

The State of Texas, County of Bastrop.

In District Court, Fall Term, 1852. To the Judge of the Second Judicial District of said State:—

Your petitioners, Henry Shelden, Nelson Clements, and Edwin A.

Shelden, former partners in the mercantile business, trading under the firm, name, and style of Henry Shelden & Co., all resident citizens of the city, county, and State of New York, represent that James Nicholson, a resident citizen of the county of Bastrop and State of Texas, on or about the 30th day of September, 1851, made, executed, and delivered to your petitioners his obligation in writing, commonly called a note of hand, in the words and figures substantially as follows:—

"$1069 06. Bastrop, Sept. 30th, 1851.

"One day after date I promise to pay to the order of Henry Shelden & Co. ten thousand six hundred and ninety-one $\frac{06}{100}$ dollars for value received, it being for a debt contracted by me prior to my assignment of my property for the benefit of my creditors.

"JAMES NICHOLSON."

By means whereof, he, the said Nicholson, became justly indebted and bound to pay your petitioners the sum of money in said obligation specified whenever the same became due according to the tenor and effect thereof, together with interest at eight per cent. per annum from the 1st day of October, 1851, until paid. Petitioners further represents, that the said Nicholson has never paid said debt, or any part thereof, although often requested so to do. Wherefore petitioners pray that citation may issue, commanding said Nicholson to be and appear at the next regular term of your honor's court to be holden in the town of Bastrop, in the county of Bastrop, and State of Texas, to answer all the charges in this petition; upon a final hearing hereof, petitioners pray for a judgment against the said James Nicholson for their principal debt, and interest, and all costs of this suit; and, as in duty bound, will ever pray.

CHANDLER, McFARLAND & CHANDLER,
Attorneys for Petitioners.

"I hereby waive the filing of the foregoing petition, and the issuing a copy and writ thereon, and the service of the same by the sheriff, and except service of said petition, and agree that it may be filed for the Fall Term, 1852, of the District Court of Bastrop County. October, 1852. JAMES NICHOLSON."

Filed the 28th Octo., 1852. JAS. P. WALLACE,
Clk. D. C. C. B."

"1069 06. Bastrop, Sept. 30th, 1851.

One day after date I promise to pay to the order of Henry Shelden & Co. ten thousand six hundred and ninety-one $\frac{06}{100}$ dollars, for value received, it being for a debt contracted by me prior to my assignment of my property for the benefit of my creditors.

JAMES NICHOLSON."

"Filed 20th Novr., 1852.

J. P. WALLACE, Cl'k D. C. C. B.

HENRY SHELDEN & Co.
vs.
JAMES NICHOLSON.

This day came the plaintiffs by their attorneys, and it appearing to the satisfaction of the court the defendant has failed to file his answer in said cause within the time prescribed by law, but made default, it is therefore adjudged and decreed by the court that the plaintiffs Henry Shelden, Nelson Clements, and Edward A. Shelden, under the firm, name, and style of Henry Shelden & Co., have and recover of the defendant James Nicholson the sum of eleven thousand six hundred and sixty dollars and twenty-four cents for their principal debt and interest up to judgment, with lawful interest thereon until paid, together with all costs of this suit in this behalf expended, for which execution may issue.

The State of Texas, County of Bastrop.

To the sheriff of said county, greeting: In the name and by the authority of the State of Texas, whereas Henry Shelden & Co. did, on the 20th day of November, A. D. 1852, before our honorable the District Court, then in session holding its fall term, 1852, in and for said County of Bastrop, recover a judgment against James Nicholson for debt the sum of eleven thousand six hundred and sixty $\frac{24}{100}$ dollars, and the annexed bill of costs of $8\frac{20}{100}$, which judgment remains unsatisfied. Therefore these presents are to command you that of the goods, chattels, lands, and tenements of the said James Nicholson to be found in your county, you cause to be made the sum of $11{,}660\frac{24}{100}$ dollars debt, with interest thereon from judgment, and the annexed bill of costs $8\frac{20}{100}$, together with your further legal fees and commissions for executing this writ, and that you make due return of the same herewith as the law directs. Attest, James P. Wallace, clerk District Court, Bastrop County, with the seal of said court hereunto affixed, at office in the town of Bastrop this the 20th day of December, 1852.

JAMES P. WALLACE, Cl'k D. C. C. B.

Annexed bill of costs:—

Clerk's fees—doct'g cause, 15c.; ent'g def't, 50c.,	65
Assessing damages,	50
Entering judgt. 50; filing 3 papers, 30; tax'g cost, 25,	1 05
Record, 1 50; ent'g shff's return, 50; exc., 50,	2 50
Sheriff's fees—venued fee, 50; returning ex., 50,	1 00
Jury fee,	3 00
	8 70

Issued 20 Decr., 1852. JAS. P. WALLACE, Clk.
Came to hand 22d Decr., 1852. JOHN HEAM, Sh'ff.
Returned, no property to be found, this 16th May, 1853.
JOHN HEAM, Sh'ff B. C.

The State of Texas, County of Bastrop.

I, James P. Wallace, clerk District Court, Bastrop County, do hereby certify that the foregoing is a true copy of the original records of my office of the foregoing cause of Henry Shelden & Co. *vs.* Jas. Nicholson. Given under my hand and seal of office at Bastrop this 3d June, A. D. 1853.

[SEAL.] JAS. P. WALLACE, Clk. D. C. C. B.

And thereupon afterwards, to wit, on the fourteenth day of July, in the year of our Lord one thousand eight hundred and fifty-three, two subpœnas in due form were issued from the said District Court in the words and of the tenor following, to wit:—

(*Subpœna.*)

United States of America, District of Texas.

The President of the United States to James Nicholson, greeting:—

You are hereby commanded to appear personally before the honorable the United States District Court, exercising the powers and jurisdiction of a Circuit Court of the United States, at a court to be holden in the City of Austin in and for said district, on the third Monday of November, or whensoever the said court shall there be, to answer a bill exhibited against you, who are impleaded with Thomas C. Moore, by Henry Shelden *et als.*, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 14th day of July, A. D. eighteen hundred and fifty-three, and 78th year of the independence of the United States of America.

[SEAL.] W. P. DE NORMANDIE, Clerk.

The defendant is required to enter his appearance in the above suit in the clerk's office, on or before the first Monday of September next, otherwise the bill will be taken as confessed.

W. P. DE NORMANDIE, Clerk.

Upon which said subpœna is the following endorsement of service by the Marshal, to wit:—

Received on the 17th day of July, 1853, and executed on the 8th day of August, 1853, by giving the within defendant, James Nicholson, a true copy of this subpœna and showing him the original.

BEN. McCULLOCH, U. S. M.
By H. E. McCULLOCH, Dep'ty M.

Issued July 14th, 1853.

W. P. DE NORMANDIE, Clerk.

Returned Aug. 10th, 1853, and filed.

W. P. DE NORMANDIE, Clerk.

(*Subpœna.*)

United States of America, District of Texas.

The President of the United States to Thomas C. Moore greeting:—

You are hereby commanded to appear personally before the honorable the United States District Court, exercising the powers and jurisdiction of a Circuit Court of the United States, at a court to be holden in the city of Austin, in and for said district, on the third Monday of November, or whensoever the said court shall there be, to answer a bill exhibited against you, who are impleaded with James Nicholson, by Henry Shelden et al., and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty of two hundred and fifty dollars.

Witness, the Hon. John C. Watrous, Judge of said court, and seal of court, at the city of Austin, this 14th July, [SEAL.] A. D. eighteen hundred and fifty-three, and 78th year of the independence of the United States of America.

W. P. DE NORMANDIE, Clerk.

The defendant is required to enter his appearance in the above suit in the clerk's office, on or before the first Monday of September next, otherwise the bill will be taken as confessed.

W. P. DE NORMANDIE, Clerk.

Upon which said subpœna is the following endorsement of service by the Marshal, to wit:—

Received on the 17th day of July, 1853, and executed on the 8th day of August, 1853, by giving the within defendant, Thomas C. More, a true copy of this subpœna and showing him the original.

BEN. McCULLOCH, U. S. M.
By H. E. McCULLOCH, Dep'ty M.

Issued July 14th, 1853.

W. P. DE NORMANDIE, Clerk.

Returned Aug. 10th, 1853, and filed.

W. P. DE NORMANDIE, Clerk.

And afterwards, to wit, on the thirtieth day of August, in the year of our Lord one thousand eight hundred and fifty-three, the said complainants, by their solicitors, filed their amended petition, in the words and of the following tenor, to wit:—

(*Amended Petition.*)

The United States of America, District of Texas.

U. S. Dist. Court for the District of Texas. Fall term, 1853.

To the Honorable John C. Watrous, Judge of the United States District Court for the District of Texas:—

Your orators, Henry Shelden, Nelson Clements, and Edward A.

Shelden, former partners in the mercantile business, in the city and State of New York, under the firm name of Henry Shelden & Co., now file this, their amended petition, in their suit instituted on the 1st day of July, 1853, against Thomas C. Moore and James Nicholson, resident citizens of the county of Bastrop, in the State of Texas, in said United States District Court.

Your orators state that the said lots mentioned in your orators' original petition as having been transferred by the said James Nicholson to the said Thomas C. Moore, at or about the time of the transfer of the goods from said Nicholson to said Moore, are as follows, to wit: A block of lots in the town of Bastrop, in said State of Texas, known in the plan of said town as block No. 95 (ninety-five), east of Main street, fractional lot or block No. 4 (four), east of Main street, and lots No. (65) sixty-five, No. 62 (sixty-two), and seventy (70), in block.

Your orators reiterate here all the charges and allegations made in their said original petition in reference to the transfer of the lots mentioned in said original petition, and say that the said transfer of the said above mentioned lots, and block of lots, were made by the said Nicholson to the said Moore without any consideration therefor; that the said transfers, copies of which are hereto appended, marked respectively A, B, and C, and prayed to be taken and considered as a part of this petition, were made with the design and object of preventing the creditors of the said Nicholson from collecting their said debts; that the said transfers were and are fraudulent, and they, the said Nicholson and Moore, are severally required to answer and set forth what consideration, if any, passed from the said Moore to the said Nicholson for said lots, and if they were not made as herein charged, how otherwise.

Petitioners pray, in addition to the prayer contained in their original petition, that the said conveyance of said lots, copies of which are hereto attached, may be decreed to be fraudulent and void, and that the said lots may be decreed to be sold in satisfaction of your orators' said judgment against the said Nicholson, as stated in their original petition; and generally for such order and decree in the premises as to equity seems meet; and they, as in duty bound, will ever pray, &c. HAMILTON & CHANDLER,

Attorneys for Complainants.

"The State of Texas, County of Bastrop.

Know all men by these presents, that I, James Nicholson, for and in consideration of two hundred and ten dollars of lawful money of the United States, in hand paid, have bargained, sold, and conveyed, and by these presents do bargain, sell, and convey unto Thomas C. Moore, his heirs and assigns, three certain farm lots lying and being in the town of Bastrop, and designated on the plat of said town as lot No. sixty-five (65), sixty-two (62), and seventy (70), formerly transferred from Samuel Wolfenbarger to James

Nicholson, and recorded in the office of the clerk of the County Court of Bastrop County, with all the improvements thereunto belonging. To have and to hold the same unto him, the said Thomas C. Moore, his heirs and assigns, forever. And I do hereby bind myself, my heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said Thomas C. Moore, his heirs and assigns, against every person whomsoever claiming or to claim the same, or any part thereof. Witness my hand and seal (in lieu of which I make my scrawl) this the thirteenth day of June, A. D. 1851.

JAMES NICHOLSON. [SEAL.]

Signed, sealed, and delivered in presence of
A. B. HEMPHILL,
L. D. HILL.

Note.—The word thirteen interlined before signing."

"The State of Texas, County of Bastrop.

I, K. H. Nicholson, release all right as dower to the land contained in the foregoing annexed deed for the consideration therein contained, this June 15th, 1851.

K. H. NICHOLSON. [SEAL.]

Signed in presence of
A. B. HEMPHILL,
L. D. HILL."

The State of Texas, County of Bastrop.

Before me, the undersigned, Clerk of the County Court in and for said county, personally appeared James Nicholson, to me well known, and in my presence signed the foregoing annexed deed, and acknowledged that he had signed, sealed, and delivered said deed for the considerations and purposes therein contained: likewise at the same time and place, before me, the said clerk, personally appeared K. H. Nicholson, wife of said James Nicholson, and, after having said deed explained to her, did then sign her name to said deed, and after being duly examined privately and apart from her husband touching the same, acknowledged that she had signed, sealed, and delivered the same as her voluntary act and deed for the consideration and purposes therein contained, and wished not to retract the same for any consideration whatever.

In testimony whereof, I have hereunto set my hand and seal of office this 13th day of June, A. D. 1851.

WILLIAM DUNBAR, Clk. C. C. B. C.

A true copy of the original filed at 2 o'clock P. M., the 13th June, 1851, and recorded at 10 o'clock A. M., 14th June, A. D. 1853.

WILLIAM DUNBAR, Clk. C. C. B. C.

I, William Dunbar, Clerk of the County Court in and for said

county, do hereby certify that the foregoing transcript is a true copy of the original recorded in the county clerk's office, in Book H, of deed record, pages 41 and 42.

In testimony whereof, I have hereunto set my hand and seal this June 26th, A. D. 1853.

[SEAL.] WILLIAM DUNBAR, Clk. C. C. B. C.
By CICERO NASH, Deputy.

Exhibit A.
Exhibit B.

The State of Texas, county of Bastrop.

Know all men by these presents that I, James Nicholson, for and in consideration of two hundred dollars in lawful money *lawful money* of the United States, in hand paid, have bargained, sold and conveyed, and by these presents do bargain, sell and convey unto Thomas C. Moore, his heirs and assigns, a certain block of lots in the town of Bastrop, known and designated on the *on the* plat of said town as block of lots No. ninety-five (95), east of Main street, formerly transferred by William Cannon to James Nicholson, and recorded in the office of the clerk of the County Court of Bastrop County, with all the improvements thereunto belonging: To have and to hold the same unto him, the said Thomas C. Moore, his heirs and assigns forever: and I do hereby bind myself, my heirs, executors, administrators, to warrant and forever defend all and singular the said premises unto the said Thomas C. Moore, his heirs and assigns, against every person whomsoever claiming or to claim the same or any part thereof.

Witness my hand and seal, in lieu of which I use my scrawl, this thirteenth day of June, A. D. 1851.

Note.—The word "Cannon" was interlined before signing.

JAMES NICHOLSON. [SEAL.]

Signed, sealed and delivered in presence of—

A. B. HEMPHILL,
L. D. HILL.

The State of Texas, county of Bastrop.

I, K. H. Nicholson, release all right as dower to the land contained in the foregoing annexed deed, for the considerations and purposes therein contained, this June 13th, A. D. 1851.

K. H. NICHOLSON. [SEAL.]

Signed in presence of—

A. B. HEMPHILL,
L. D. HILL.

The State of Texas, county of Bastrop.

Before me, the undersigned, clerk of the County Court in and for said county, personally appeared James Nicholson, to me well known,

and in my presence signed his name to the foregoing annexed deed, and acknowledged that he had signed, sealed and delivered said deed for the consideration and purposes therein contained.

Likewise at the same time and place, before me, the said clerk, personally appeared K. H. Nicholson, wife of the said James Nicholson, and having said deed explained to her by me, did then sign her name to said deed, and after being by me examined privately and apart from her said husband, touching the same, did then acknowledge that she had voluntarily signed, sealed and delivered the same said annexed deed as her own act and deed for the consideration and purposes therein contained, and wished not to retract the same for any consideration whatever.

In consideration whereof I have hereunto set my hand and seal of the County Court of said county, at office in the town of Bastrop, this the 13th day of June, A. D. 1851.

WILLIAM DUNBAR, Cl'k C. C. B. C.

A true copy of the original filed at 2 o'clock P. M., June 13th, 1851; recorded at 9 o'clock A. M., the 14th June, 1851.

WILLIAM DUNBAR, Cl'k C. C. B. C.

I, William Dunbar, clerk of the County Court in and for said county, do hereby certify that the foregoing deed and certificates of acknowledgment are true copies of the original, recorded in the county clerk's office in Bastrop Co., in book H of deed record, page 39 and 40.

I have hereunto set my hand and seal of Bastrop County Court, this the 25th of June, A. D. 1853.

[SEAL.] WILLIAM DUNBAR, Cl'k C. C. B. C.
By CICERO NASH, Deputy.

Exhibit C.

The State of Texas, county of Bastrop.

Know all men by these presents that I, James Nicholson, of the county aforesaid, for and in consideration of one hundred and fifty dollars of lawful money of the United States, to me in hand paid, the receipt of which is hereby acknowledged, have bargained, sold and conveyed, and do by these presents, bargain, sell and convey unto Thomas C. Moore, of the county *of the county* and State aforesaid, a certain tract of land lying and being in the town of Bastrop, known as fractional lot or block No. 4 (four), east of Main street, known and conveyed as such on the map or plat of said town as the property of Charles Strickland, and conveyed to me by a deed dated , and of record in the county clerk's office, book , page To have and to hold unto the said Thomas C. Moore, his heirs and assigns, forever. And I do hereby bind myself, my heirs, executors, administrators, to warrant and forever defend all and singular the said premises unto the said Thomas C. Moore, his

heirs and assigns, against every person whomsoever claiming or to claim, or any part thereof.

Witness my hand and seal (using the scrawl for seal), June, thirteenth day, A. D. 1851. JAMES NICHOLSON. [SEAL.]

Signed, sealed, and delivered in presence of

A. B. HEMPHILL,
L. D. HILL.

NOTE.—The words "known," "certain tracts of land," interlined before signing.

The State of Texas, County of Bastrop.

I, R. H. Nicholson, do hereby relinquish all right, title, and interest to the property contained in the foregoing annexed deed, bearing date June 13th, 1851. R. H. NICHOLSON. [SEAL.]

In presence of

A. B. HEMPHILL,
L. D. HILL.

The State of Texas, County of Bastrop.

Before me, the undersigned, clerk of the County Court in and for said county, personally appeared James Nicholson, to me well known, and in my presence signed the foregoing annexed deed, and acknowledged that he signed, sealed, and delivered the said deed for the consideration and purposes therein contained. Likewise, at the same time and place, before me, the said clerk, personally appeared R. H. Nicholson, wife of the said James Nicholson, and, after having the said deed read and explained to her by me, did then sign her name to said deed; and after being by me examined privately, separate and apart from her said husband, touching the same, did then acknowledge that she had voluntarily sign, seal, and deliver said annexed deed as her own act and deed, for the consideration and purposes therein contained, and wished not to retract the same for any consideration whatever.

In testimony whereof I have hereunto set my hand and seal of the County Court of said county, at office in the town of Bastrop, this 13th day of June, A. D. 1851.

WILLIAM DUNBAR, Cl'k C. C. B. C.

A true copy of the original on file at 2 o'clock P. M., June 13th, 1851. Recorded at 8 o'clock A. M., June 14th, A. D. 1851.

WILLIAM DUNBAR, Cl'k C. C. B. C.

I, William Dunbar, clerk of the County Court in and for said county, do hereby certify that the foregoing deed and certificates are true copies of the original recorded in the clerk's office in Bastrop, in book H of deed record, page 38 and 39.

Given under my hand and seal of Bastrop County Court, this June 25th, A. D. 1853.

[SEAL.] WILLIAM DUNBAR, Cl'k C. C. B. C.
By CICERO NASH, Deputy Clerk.

And afterwards, to wit, on the fifth day of September, in the year of our Lord one thousand eight hundred and fifty-three, the said defendants, by their solicitors, I. A. & G. W. Paschal, entered their appearance as follows:—

(*Appearance.*)

Austin District, September Rules, 1853. 5th September.

HENRY SHELDEN & Co.
vs.
MOORE & NICHOLSON. } In Chancery.

The defendants, Thomas C. Moore and James Nicholson enter their appearance in the cause.

I. A. & G. W. PASCHAL, Sol's for Def'ts.

And afterwards, to wit, on the third day of October, in the year of our Lord one thousand eight hundred and fifty-three, the following entry was made in said cause, to wit:—

October Rules. October 3d, 1853.

HENRY SHELDEN & Co.
vs.
MOORE & NICHOLSON. } In Chancery.

The defendants, Thomas C. Moore and James Nicholson, file their answer.

GEO. W. PASCHAL.

And afterwards, to wit, on the day and year last aforesaid, the said defendants, James Nicholson and Thomas C. Moore, by their solicitors, filed their separate answers in this cause in the words and of the following tenor, to wit:—

(*Answer of Nicholson.*)

In the United States District Court, District of Texas.

HENRY SHELDON et al.
vs.
JAMES NICHOLSON and THOMAS C. MOORE.

The separate answer of James Nicholson to plaintiffs' bill of complaint exhibited against himself and Thomas C. Moore in the United States District Court excercising jurisdiction in and for the State of Texas, in chancery.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be taken to the many errors, uncertainties, and other imperfections in said complainants' said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is or are material for him to make answer unto, this defendant, answering, saith, that it is true that he was indebted to the complainants, on or about the 13th day of March, A. D. 1851,

in the sum of ten thousand six hundred and ninety-one $\frac{6}{100}$ dollars, or thereabouts, and it is also true that he executed his note on the 30th day of September, A. D. 1851, to the complainants, for the said sum, payable one day after date; and this defendant admits that it is also true that suit was instituted against him by the complainants in the District Court of Bastrop County, and that at the fall term, A. D. 1852, they obtained a judgment against him for the sum of eleven thousand six hundred and sixty-one $\frac{4}{100}$ dollars for their principal debt and interest, and the further sum of eight $\frac{70}{100}$ dollars costs of suit, and that execution issue thereon, and that the same was returned—"No property found." This defendant, further answering, says, that it is true that he was largely indebted after he became indebted to the complainants, and before the execution of the note aforesaid to the complainants, to wit, in or about the sum of fifteen thousand dollars, including the debt due to the complainants. This defendant says that he had at that time the remainder of his stock of goods on hand, but that they did not amount, at the cost rates and expenses, to the sum of eighteen thousand dollars, but at cost rates and expenses the amount would not exceed

The defendant further admits that he sold the remainder of said stock of goods to said Thomas C. Moore, his co-defendant, but denies that he sold to said Moore at that time any real estate of any description, or that any real estate was connected in any manner or form with the sale of said goods. And this defendant further admits that at the time of said sale to said Moore he was embarrassed and unable to meet promptly his debts, but he believes that he could have paid off with his means on hand and discharged every debt he owed, if his creditors had given him some indulgence, that he had property and effects sufficient to do so, but that he well that if his effects were seized and sacrificed some of his creditors would lose their entire debt, which consideration induced him to make the sale as aforesaid as well as the assignment that all his creditors might be protected, that he felt perfectly satisfied that he transferred by assignment for the benefit of all his creditors means amply sufficient to discharge all his liabilities. This defendant expressly denies that said Moore ever advised him to make the sale of said goods, or suggested to him the propriety of so doing, and most positively denies the charge of fraud, or that there was the merest intention of defrauding the complainants or any other person. This defendant also expressly denies that there was any collusion between said Moore and himself for the purpose of defrauding the complainants in manner as set forth in their bill of complaint, or that there was any understanding between himself and said Moore, that they were to share the profits which might be made off of said goods, and also he denies that said Moore offered to take said goods at a discount of thirty per cent. upon New York prices, but that he (the said defendant) offered to sell said goods to said Moore at a discount of twenty per cent. upon New York cost, and that the said Moore acceded to the propo-

sition, and the sale was made at that rate, and upon the consummation of the contract he executed several notes payable at different times (some payable to some of the creditors of this defendant).

This defendant denies that at the same time he sold any lots to the said Moore, situated in the town of Bastrop, but upon the consummation of the sale of said goods, wares, and merchandise, the said Moore executed his notes as aforesaid, amounting in the aggregate to about the sum of six thousand three hundred and ten $\frac{35}{100}$ dollars. This defendant further answering admits that several days after the consummation of said sale, he asked said Moore what course he had better pursue, when Moore suggested to him the propriety of making an assignment for the benefit of his creditors, which he did, but this defendant positively denies that the said Moore ever advised him to withhold any or either of said notes, executed as aforesaid, from the general surrender of his effects and apply the same to his individual purposes; and he also denies that he ever did withhold any or either of said notes, and apply it or them to his individual use or for that purpose, but he turned them over and transferred them all to his creditors. And he says that since the assignment he has paid over one thousand dollars on account of his old debts out of money which he has accumulated from his own labor, since the assignment aforesaid. And this defendant denies most positively that the complainants were hindered, delayed, or prevented in the collection of their debt against him, because of any fraud or collusion between him and the said Moore as charged; and further he says in reference to the market price of said goods sold to said Moore, that so far as he knows and believes that is usual among merchants in the town of Bastrop to mark their goods for *retail* at thirty-five per cent. above New York cost, and add thereon ten per cent. for charges of transportation. He denies that said goods sold to said Moore at retail or otherwise was worth the sum of twenty-seven thousand dollars. This defendant denies that he had no other visible means or tangible property beside that conveyed to said Moore; and this defendant denies that he was in failing circumstances at the time of the transfer and sale to said Moore of his said goods, wares, and merchandise, but says he could have paid all of his debts, if his creditors had given him time to have made collections; and further he denies that said Moore's notes, executed for the purchase of said goods, were for less than the half of the just value thereof; and in reference to any secret understanding or contract between himself and said Moore, that they was to share the profits "whatever profits should be made upon the said fraudulent purchase," this defendant pronounces to be absolutely false and untrue, as charged in complainants' bill. This defendant further answering says that it is untrue that "there was no consideration passed from said Moore to said Nicholson for the two lots and improvements, situated in the said town of Bastrop," and he denies as he heretofore has done, that there was any collusion between himself and said Moore to defraud the complainants or his

other creditors. And that said Moore did not advise him to withhold two five hundred dollar notes, executed to said Nicholson for said goods, from a general assignment for the benefit of his creditors, shortly after said conveyance. This defendant says that it is untrue that he had no other property than that which he sold to said Moore; and he denies that he "preferred creditors in the assignment to more than the amount of the assets which were placed in the hands of the trustee appointed," but says that he placed in the hands of the trustee sufficient assets, if they had or can be collected, to discharge all and every debt he owes, though as the assignment is not called in question, the defendant does not see the applicability of the charge.

This defendant, in answer to the interrogatories propounded to himself and his co defendant, and himself alone, and contained in the complainants' said bill of complaint, says to

Int. 1st. The said Moore has never paid to him any portion of the profits made by him, said Moore, upon the said purchase. To

Int. 2d. This defendant does not know whether said Moore knew that this defendant was in failing circumstances at the time of the sale of said goods, lots, &c., to him the said Moore. (This defendant says that he informed said Moore that he was pressed and embarrassed for the want of money to meet his bills then due. He think that he informed said Moore before the sale, that he was indebted to the complainants; that he purchased the greater portion of his stock from them, but did not know the amount of indebtedness to the complainants, as he had shipped them a lot of cotton to be placed to his credit, and had received no returns or accounts of sales. The said Moore did not know the amount of indebtedness to said complainants.)

Answer to int'g 2d. This defendant says that the goods, wares, and merchandise sold by him to said Moore amounted at New York cost to the sum of seven thousand eight hundred and eighty-seven $\frac{65}{100}$ dollars, to which he adds ten per cent. for costs and charges, making the sum of eight thousand five hundred and fifty-six $\frac{72}{100}$ dollars. He thinks the said goods sold by him to said Moore at retail ought to have been worth thirty-five per cent. upon New York cost and carriage, less the expenses of rents, clerk's hire, and expenses of sale, but at wholesale, such as he made to said Moore, he does not believe them to have been worth more than he received for them, to wit, the sum of six thousand three hundred and ten $\frac{35}{100}$ dollars; that he was willing to sell them to any one for that amount, and is satisfied that he could not have done any better, or sold them for a larger profit at that time to a responsible person or persons.

And this defendant states, by way of answer to the complainants' amended bill, that the following is the history of the sale of said lots in the town of Bastrop: That on the 12th day of June, A. D. 1851, that said Thomas C. Moore, his co-defendant, purchased in good faith the said lots, paying thereupon the sum of eight hundred and sixty dollars; that subsequent to said purchase he, the said Nichol-

son, agreed with the said Moore that the said lots might be repurchased at the same price for which they were sold, with interest on said sum from the date of said sale. And further this defendant states, that the said lots were repurchased by his wife, Mrs. Nicholson, and suit was instituted at the spring term, A. D. 1853, before the District Court of Bastrop County, to force his co-defendant, the said Moore, to reconvey said lots to said Mrs. Nicholson, and he is informed and believes that the court decreed that the said Moore should make good and sufficient title to the said Rebecca H. Nicholson to said lots aforesaid, except to fractional block of lot numbered four (No. 4), east of Main Street (and also one lot No. 95, east of Main Street, which was redeemed and sold to pay a debt due from def't), in said town of Bastrop, which said Moore is ready to do. This defendant denies all and all manner of unlawful combinations and confederacy wherewith he is by the said bill charged without this, that there is any other matter, cause, or thing in said complainants' said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge and belief of this defendant. All which matters and things this defendant is ready to aver, prove, and maintain, as this honorable court shall direct; and humbly hopes to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

SAYLES, BLAUTON & ROSE,
GEORGE W. PASCHAL,
Attorneys for Defendants.

State of Texas, Bastrop County.

Personally appeared before me, William H. Garrett, Chief Justice of the County Court of Bastrop County, James Nicholson, who being by me first duly sworn, deposes and says, that the facts, matters and things set forth in the foregoing answer as of his own knowledge are true, and those set forth as upon the information of others, he believes to be true.

Given under my hand at office in the town of Bastrop, county and State aforesaid, this 22d day of September, A. D. 1853.

[SEAL.] WILLIAM H. GARRETT,
Chief Justice B. C.

(*Answer of Moore.*)

United States District Court, in Chancery.

The separate answer of Thomas C. Moore to the bill of complaint of Henry Shelden, Nelson Clements, and Edward A. Shelden, complainants, exhibited against the said Thomas C. Moore and James Nicholson in said court.

This defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or

may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto or to so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering saith—

That it may be true that his co-defendant, James Nicholson, became indebted to the complainants, as by them stated, and he may have executed his note to them, and they may have obtained judgment, and an execution may have been returned *nulla bona* as by the complainants stated, but of all this defendant knows nothing, except what he has heard, which induces him to believe it is true, as by the complainants stated.

And it may be true that after the indebtedness of said Nicholson he was also indebted to others, but of this this complainant knows nothing, and he may have been in possession of goods to the value of eighteen thousand dollars, but the defendant does not believe it. And this defendant admits that on the seventh day of July, A. D. 1851, in the city of Bastrop, he purchased of the said Nicholson a lot of goods, but he positively denies that the said goods, wares and merchandise were of the value of eighteen thousand dollars, at the cost rates and expenses of transportation; on the contrary, this defendant says that the goods purchased by him at the New York invoiced prices amounted to seven thousand eight hundred and eighty-seven $\frac{25}{100}$ dollars, but said goods were originally invoiced at high prices, and many of them unseasonable goods, were a broken stock which had been culled by retail sale, and were not worth New York cost at Bastrop. And this defendant admits that it may be true that at the time of the said sale of said goods by said Nicholson to this defendant, said Nicholson was in failing circumstances, and unable to meet promptly his demands, but of the extent of his embarrassment this defendant then knew nothing, and he positively denies that he then had any knowledge of said Nicholson's indebtedness to the complainants, and he also positively denies that it was at this defendant's suggestion and upon his advice that his co-defendant made the transfer of said goods, wares, and merchandise. On the contrary, this defendant says that the said goods were offered to this defendant by the said Nicholson after he had offered them in market to others, and the purchase was made by this defendant reluctantly, and the said trade was made in the utmost good faith, and not with the intention of defrauding the complainants or any other person. This defendant positively denies that there ever was any proposition for or understanding that this defendant should purchase said stock of goods at a discount of thirty per cent., and that whatever profits might be made upon said goods by the defendant, should be shared between himself and said Nicholson, nor is it true that at the time of said purchase the said Nicholson transferred to this defendant any town lots in Bastrop or elsewhere, worth two thou-

sand dollars or any other sum. A full answer as to the lot transaction will be given in this defendant's answer to the amendment.

And this defendant denies that he gave said Nicholson, in consideration of said goods and lots, his notes for eight thousand dollars, or that he received property from the said Nicholson to the value of twelve thousand dollars in fraud of the rights of complainants.

This defendant protests that his advice to said Nicholson has nothing to do with this controversy, but to the said impertinent statement this defendant says that after the said purchase of said goods he recollects that the said Nicholson applied to him to become his assignee, saying that he intended to make an assignment of his effects for the benefit of his creditors; and this defendant declined to act as assignee, and advised the said Nicholson to get some other person.

And this defendant positively denies that he ever advised said Nicholson to withhold two of this defendant's notes for five hundred dollars each, from his creditors, and appropriated them to his own use. The charge is positively untrue; but, if true, this defendant denies that complainants would have any legal grievances in consequence thereof.

This defendant denies all collusion and fraud with the said Nicholson, whereby the said complainants have been prevented from collecting their debts. This defendant cannot forbear to except to and urge as of demurrer the contradictory charges in the complainants' interlined and loosely drawn bill, with its interpolated amendments; the charge being, as this defendant understands it, first, that the goods were worth eighteen thousand dollars; secondly, that they and the lots were worth twelve thousand dollars; then that they were actually worth twenty-seven thousand dollars.

But this defendant denies that said goods were worth fifty per cent. or any other per cent. on the first cost. This defendant, as complainants well know, could have made far better purchases on his own paper in New York than to have bought them at cost, and he positively denies that they were worth twenty-seven thousand dollars or any other such large sum; on the contrary, this defendant bought them for the sum of six thousand three hundred and ten $\frac{35}{100}$ dollars, which was their full value. This defendant does not know whether or not said Nicholson had any other visible means out of which said complainants' could have made their debt. He has been advised and believes that large portions of his means have gone into the hands of the complainants' solicitor and other attorneys, and whose debts or what purposes they have been appropriated this defendant does not know.

This defendant protests that no rule of chancery practice requires him to answer the same charges repeated over and over again, as if the complainants expected to give plausibility to an oft-repeated untruth.

This defendant denies that at the time of the purchase of said goods on the fifth of July, 1851, the said Nicholson conveyed to this

defendant without consideration, and for the purpose of avoiding his creditors, the lots in the complainants' amended petition described; and he positively denies that his purchase was made without a valuable and sufficient consideration; on the contrary, this defendant says that said lots were before said purchase of said goods, to wit, on the twelfth (12) day of June, A. D. 1851, purchased by this defendant, and payed for in good faith.

The facts of the transaction are as follows, to wit: on the 12th day of June, 1851, this defendant purchased the lots mentioned in the original and amended bill in good faith for the sum of eight hundred and sixty dollars, all of which was paid in like good faith; that subsequent to said purchase he agreed with his said co-defendant that the lots might be re-purchased at and for the same money, with interest thereon at 10 per cent. per annum; and further, that the said purchase money was paid to him by Mrs. Nicholson, the wife of his co-defendant, and suit instituted, at the spring term, 1853, of the Bastrop District Court, to force this defendant to reconvey the said lots to the said Mrs. Nicholson; and he is informed and believes that the court decreed this defendant should make good and sufficient titles to her to the said lots, except fractional lot of block No. four, east of Main Street, in said town of Bastrop, which this defendant is ready to do, and also lot No. 95, east of Main Street, which was redeemed and afterwards sold to satisfy a debt due from said Nicholson, as he is informed and believes. And now in answer to complainants' first interrogatory he says, that he gave his notes to said Nicholson for said goods to the amount of six thousand three hundred and ten $\frac{35}{100}$ dollars. That one of said notes was executed to T. J. Gazly for five hundred and six $\frac{38}{100}$ dollars, the other notes were executed to said Nicholson, and as he understands they have all been transferred by said Nicholson to his creditors; that dollars of them have been paid and taken up; that one other, to the amount of eight hundred and ten $\frac{18}{100}$ dollars, has been taken up and a bill of exchange given therefor, which is now held by the complainants' solicitor or his partner, upon which they are urging payment, and that he does not owe any of said sum to said Nicholson. That the amount of goods received from him, Nicholson, invoiced at New York prices, was seven thousand eight hundred and eighty-seven $\frac{65}{100}$ dollars; but this defendant denies that this was a fair estimate of the New York prices for such goods at that time, for they were generally charged (particularly when sold by the complainants) at some twenty per centum over the New York prices.

This defendant declines to answer the third interrogatory, as he has advised the complainants have made no charges which require it. He is ready to produce his invoice of purchase whenever and wherever the court shall direct upon proper charge. For the same reason this defendant declines to answer the fourth interrogatory. He is not aware of any allegation in the bill which requires it.

And to the fifth interrogatory, he answers, that he never has paid any part of the profits to said Nicholson.

This defendant denies all and all manner of unlawful combinations and confederacy wherewith he is by said bill charged without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge and belief of this defendant; all which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

SAYLES, BLAUTON & ROSE,
And GEORGE W. PASCHAL,
Attorneys for Defendant.

The State of Texas, Bastrop County, ss.

Personally appeared before me, William H. Garrett, Chief Justice of the County Court of Bastrop County, Thomas C. Moore, who being by me first duly sworn, deposes and says, that the facts, matters, and things stated and set forth in the foregoing answer, as of his own knowledge are true, and those set forth as upon the information of others he believes to be true.

Given under my hand and seal of office, at office in Bastrop County and State aforesaid, this 22d day of September, A. D. 1853.

[SEAL.] WILLIAM H. GARRETT,
Chief Justice B. C.

And afterwards, to wit, on the twenty-second day of December, in the year of our Lord one thousand eight hundred and fifty-three, the said complainants, by their solicitor, F. W. Chandler, filed an application for leave to amend their bill in this cause filed, and also an affidavit on said application, which application and affidavit are in the words and of the tenor following, to wit:—

(*Application for leave to amend Bill.*)

District Court of the United States, District of Texas, at Austin.

HENRY SHELDON & Co.
vs.
MOORE and NICHOLSON. } In Chancery.

The complainants ask leave of the court to file an amendment to their bill, and among other things, to make Mrs. Nicholson a party defendant thereto. Said amendment to be filed on or before the next rule day, and in support of this application complainants refer, if necessary, to the accompanying affidavit.

F. W. CHANDLER,
Solicitor for Compl'ts.

Upon which application is the following indorsement, to wit:—

"Notice accepted."

SAYLES, BLAUTON & ROSE,
And G. W. PASCHAL, Deft's Solicitor.

(*Affidavit.*)

In the U. S. District Court at Austin.

HENRY SHELDON & Co.
vs.
MOORE & NICHOLSON. } In Chancery.

F. W. Chandler, solicitor for complainants, on oath says, that the defendants filed their separate answers at the rule-day in November last. That said answers refuse to answer material interrogatories on the ground that the averments of the bill do not lay the basis for said interrogatories; and said answers further disclose the fact that the greater number of the town lots sought to be reached in the hands of defendant Moore by complainants' bill, have been recovered from him by Mrs. Nicholson, the wife of the other defendant, thus showing the necessity not previously known of Mrs. Nicholson as a party to said bill.

That complainants' solicitors were compelled to be absent during the greater part of the time from the filing of said answer until after the last rule-day, and was besides not acquainted with the rules of court respecting amendments. That amendment making Mrs. Nicholson a party as aforesaid is absolutely necessary, to have proper parties before the court, and that the other amendments are deemed material to the justice of the case.

F. W. CHANDLER, Att'y for Plaintiffs.

Sworn to and subscribed before me, this 22d day of December, 1853.

W. P. DE NORMANDIE, Clk.

And afterwards, to wit, on the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and fifty-three, the said complainants, by their solicitors, filed an amendment to their bill in this cause, in the words and of the tenor following, to wit:—

(*Amendment to Bill.*)

The United States of America, District of Texas.

Amendment to the original and amended bill of complaint of Henry Sheldon, Nelson Clements and Edward A. Sheldon, formerly merchants and partners under the firm name of Henry Sheldon & Company, complainants, against James Nicholson and Thomas C. Moore, defendants, in the District Court of the United States for the District of Texas, at Austin.

Leave of the court having been first obtained, your orators, by way of amendment to their said original and amended bill, further

show: That the said defendant Moore received from said defendant Nicholson, and now has in his possession or under his control, the original invoices of the goods purchased in whole or in part by him from said Nicholson, which said invoices were made in New York by the merchants from whom said Nicholson purchased said goods. That said invoices are material and necessary in order to show the cost of said goods, and will sustain the averments of your orators in relation to the said cost in their original bill. That if said invoices are not in the possession or control of said defendant Moore, they are in the possession or control of his co-defendant Nicholson; and your orators require that the same be annexed to the answer of said defendants, or the defendant holding or controlling the same.

Your orators further show, that said defendants sometimes pretend that the value of the goods purchased by said Moore from said Nicholson, as alleged in the original bill, was of much smaller amount than is stated and charged by your orators in their original bill. But your orators aver, that at or about the time of said purchase by said Moore, an account or invoice of the entire stock of goods, wares and merchandise so purchased by said Moore of said Nicholson was made by the parties or one of them, and is now in the possession or control of said Moore, or of said Nicholson. That an exhibit of the said account or invoice so purchased by said Moore is material and necessary to show the value of said goods, and will sustain the averments of your orators in their said original bill respecting the said value; and your orators require that the original of said account or invoice be annexed to the answer of said defendants, or the one having control of the same.

Your orators further show that said goods have been long since sold by said Moore at a profit of fifty per cent., or near that amount, over and above the New York cost and charges and expenses on the same to Bastrop.

Your orators further show that the real estate or town lots, in the town of Bastrop, mentioned and sought to be reached in the original and amended bill, and more particularly specified and described in the answers of the defendants, or the greater part thereof, have been redeemed or repurchased from said Moore by Mrs. Rebecca H. Nicholson, the wife of the defendant, James Nicholson, and a decree or judgment of the District Court of Bastrop County obtained by her against said Moore for the conveyance to her of said town lots (D); that the intervention of the said Rebecca in the matter was and is with the further design of hindering, delaying, and defrauding your orators and the other creditors of the said James Nicholson, by vesting the pretended title to said property (to said property) in her. Your orators expressly deny that the pretended sale of said lots to said Moore was *bona fide* or an absolute sale, or that any real and sufficient consideration passed therefor; and they aver that the resort to a suit, and obtaining a decree for the same, by the said Rebecca,

was collusive and fraudulent, and for the purpose of giving color to her pretended title, and that in fact no new, actual and sufficient consideration passed for the pretended conveyance to her; that if any such consideration did in fact pass, the purchase or redemption being in the name of the said wife, does not exempt the said lots from liability to and for your orators' said debt and judgment, and they pray that the same be declared subject thereto, and ordered to be sold in satisfaction thereof; they further show that should it appear that said Moore held the said lots by way of mortgage from said Nicholson, and that said Rebecca redeemed the same, your orators, in any event, will have the right to claim a sale of said lots for their benefit, subject to said encumbrance, or to redeem the same, and they pray this alternative relief should it appear at the hearing that they are not otherwise entitled to satisfaction out of said lots.

Your orators submit the following interrogatories to said defendants, Moore and James Nicholson:—

1st. That you annex to your answers all the original invoices made in New York of the goods, part stock of which was purchased by said Moore of said Nicholson.

2d. That you annex to your answer the account or invoice of all the goods, wares, and merchandise purchased by said Moore of said Nicholson. Is the same the original account or invoice made at the time of the said purchase? Was it made subsequent to the said purchase, and how long subsequent; and whether subsequent to the making of any prior or original account or invoice? If the last, where is said prior or original account or invoice, and in what particulars does the one annexed to your answer vary from that? State fully and specifically.

3d. Annex to your answer the deed from said Nicholson to said Moore for said town lots, and also the deed or agreement for the repurchase of the same, which are referred to in the answers of defendants. Was there any other agreement, contract, or indenture between you, or by either of you, respecting said lots, or any of them? If so, annex the same to your answer. If you cannot annex the documents called for in this interrogatory, state why not.

Your orators pray that the said Rebecca H. Nicholson, who is a citizen of the State of Texas, residing in the said county of Bastrop, be made a party defendant to this suit, but they waive any discovery or answer under oath from her.

They pray for relief as in their original and amended bill, and that the title of the said Rebecca H. Nicholson to the said town lots in the town of Bastrop be declared fraudulent and of no effect as against the rights of your orators, and that the said town lots, with the appurtenances and improvements, be decreed by your honor to be sold in satisfaction of the said judgment of your orators, or, that by way of alternative relief, should it appear that the said Moore held the said lots by way of mortgage, and that the redemption of the same was a bona fide transaction, and that the amount paid

therefor is a valid encumbrance in favor of said Rebecca H. Nicholson, as against your orators, that the said lots be decreed to be sold, subject to said encumbrance, or that your orators be permitted to redeem the same, as may be according to equity, and the practice of your honorable court.

May it please your honor to grant unto your orators a writ of subpœna issuing from your honorable court, directed to the said Rebecca H. Nicholson, thereby commanding her at a certain day, and under a certain pain therein to be limited, personally to be and appear before your honor in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform and abide such further order, direction and decree therein, as to your honor shall seem meet. And your orators shall ever pray, &c.

HAMILTON, CHANDLER, & W. P. BALLINGER,
Solicitors for Complainants.

And upon the said above and foregoing amendment to the bill in this cause, were the following endorsements, to wit:—

Consent is given to the filing of the within amendment, the compl'ts to furnish me a copy of said amendment.

Dec. 27, 1853. GEO. W. PASCHAL, For Def'ts.

The defendants shall have until the rule day in March, to file their answer.

CHANDLER, HAMILTON, & BALLINGER,
For Compl'ts.

And, thereupon, afterwards, to wit, on the seventeenth day of January, in the year of our Lord one thousaud eight hundred and fifty-four, a subpœna in due form was issued from the said District Court, in the words and of the tenor following, to wit:—

(*Subpœna.*)

United States of America, District of Texas.

The President of the United States, to Rebeeca H. Nicholson, greeting:—

You are hereby commanded to appear personally before the honorable, the United States District Court, exercising the powers and jurisdiction of a Circuit Court of the United States, at a court to be holden in the city of Austin, in and for said district, on the first Monday of March, or whensoever the said court shall there be, to answer a bill exhibited against you, who are impleaded with James Nicholson and Thomas C. Moore, by Henry Sheldon et al., and to do further, and receive what the said court shall have considered in that behalf.

And this you are not to omit, under the penalty of two hundred and fifty dollars.

Witness, the Hon. John C. Watrous, Judge of said court, and seal

of court, at the city of Austin, this 17th day of January, A. D. eighteen hundred and fifty-four, and 78th year of the independence of the United States of America.

[SEAL.] W. P. DE NORMANDIE, Clerk.

The defendant is required to enter her appearance in the above suit in the clerk's office, on or before the first Monday of March next, otherwise the bill will be taken as confessed.

W. P. DE NORMANDIE, Clerk.
By J. M. JENNINGS, D'pty.

And upon said subpœna, is the following endorsement of service, to wit:—

United States District Court at Austin.

HENRY SHELDON & Co.
vs.
JAMES NICHOLSON, THOMAS C. MOORE, and REBECCA H. NICHOLSON.

I hereby admit due and legal service of subpœna to appear and answer in above case, on the defendant, Rebecca Nicholson.

Jan'y 27, 1854. S. C. BLAUTON,
Att'y for R. H. NICHOLSON.

And also the following endorsement by the marshal of service, to wit:—

Received on the 18th day of Jan'y, 1854, and legal service acknowledged by S. C. Blauton, the within named defendant, Rebecca H. Nicholson's attorney, on the 27th day of Jan'y, 1854. I handed the said attorney, on the above named day, a true copy of the within subpnœa. BEN. McCULLOCH, U. S. M.
By J. HANELL, Deputy.

Filed, January 29th, 1854.

W. P. DE NORMANDIE, Clerk.

(*Separate Answer of James Nicholson.*)

And thereupon afterwards, to wit, on the twenty-sixth day of February, in the year of our Lord one thousand eight hundred and fifty-four, the said defendant, James Nicholson, filed his separate answer in the words and of the tenor following, to wit:—

United States of America, District of Texas.

The separate answer of James Nicholson to the amendment to the bill of complaint exhibited against this defendant and Thomas C. Moore in the District Court of the United States.

This defendant now and at all times saving and reserving to himself all benefit of exception, &c. &c., as in his answer to the original bill for answer, says:—

This defendant says, that it is not true that his co-defendant,

Moore, received from this defendant the original New York invoices of this defendant. The goods sold by this defendant to said defendant, Moore, were the remnants and unsold goods running through the invoices of several years; and it would be very hard to select and arrange the invoices so as to show precisely what goods were sold. As soon as this defendant can have access to his papers, and get them arranged, he will bring into court, and file such of his original New York invoices as he has on hand, and will duly mark the same as a part of his answer.

This defendant says, that it is true that at the time of his sale of his remaining stock to his co-defendant, Moore, there was made out and furnished to said Moore an account or invoice of said sale, the amount of which sale at the cost in New York was given in the original answer of this defendant. The original invoices were sometimes referred to when desired, and sometimes the private mark of this defendant of the cost price of the goods was alone consulted. This defendant charged the amount of sales in his books, but kept no copy of the invoice furnished said Moore, and cannot now annex it to his answer. The invoice would not sustain the allegations in the complainants' original bill as to the cost of said goods.

This defendant cannot say whether or not said goods have been sold by said Moore at a cost of over fifty per cent. on New York cost.

This defendant refers the complainants to the record evidence referred to by them in the Bastrop District Court in regard to said lots. This defendant denies that the intention of his wife was for the purpose of hindering, delaying, and defrauding the complainants and the other creditors of this defendant; on the contrary, it was an intervention for the purpose of in good faith securing the separate property of the said Rebecca so purchased in good faith by said Rebecca from said Moore with her own means. This defendant says, that when he married the said Rebecca she was a widow, having a considerable amount of separate means and money belonging to herself and to her child by a former husband; that from time to time she loaned him these means to aid in carrying on his business, until the amount exceeded five hundred dollars; that, after the sale of said goods, this defendant, in payment of said borrowed money, transferred one of Moore's notes for five hundred dollars to her, and with it and other of her separate means she purchased said lots from said Moore.

This defendant, in fact, says, that, in regard to said lots, some time in 1848 or 1849, and while this defendant was in good circumstances, he purchased said lots from Samuel Wolfenberger for the father of this defendant; that the only reason why this defendant did not take the deed in his father's name was, because he was an alien; that this defendant's father has ever since that time occupied the said place as a homestead; that this defendant bought it for him as a homestead for his lifetime; that the old gentleman with his own

labor and hired labor has made improvements upon said property of no great value; that his father still occupies said property under an arrangement with defendant's wife, that she should repurchase the property from said Moore, and permit this defendant's father to occupy it during his lifetime.

The arrangement between the co-defendant Moore, and this defendant's wife, was not a mortgage, but a purchase in good faith, and an arrangement in which some of the creditors of this complainant who had levied upon the property concurred.

This defendant has no claim upon said lots, but refers to the original answer and records concerning the same.

This defendant has already answered the first and second interrogatories; the third he is not bound to answer further than he says; there were no deeds in regard to the matter, but such as are of record, and no other agreement but such as he has disclosed.

Without this, that there is any other matter or thing not herein admitted, traversed, or denied, is true; and this defendant having fully answered, prays to be hence discharged with his reasonable costs.

JAMES NICHOLSON.

United States of America, District of Texas.

Before the undersigned, James A. Poage, a commissioner of the United States for the District of Texas, personally appeared James Nicholson, who being duly sworn, says, that the facts in the foregoing answer are true in substance and in fact.

Subscribed and sworn to before me, this 22d day of March, A. D. 1854.

JAMES A. POAGE,
Commissioner, &c.

And thereupon, afterwards, to wit, on the day and year last aforesaid, the said defendant, Thomas C. Moore, filed his separate answer in this cause by his solicitor, in the words and of the tenor following, to wit:—

(*Answer of Moore.*)

The United States of America, District of Texas.

The separate answer of Thomas C. Moore to the amendment to the bill of complaint exhibited by Henry Sheldon & Co., complainants, in the United States District Court, against this defendant and James Nicholson, defendants.

This defendant now and at all times saving and reserving, &c. &c., as in his original answer, says, that it is not true that this defendant received from his co-defendant, Nicholson, and now has in his possession, or under his control, the original invoices of the goods purchased in whole or in part by him, said Nicholson, in New York, which invoices were made out by the merchants in New York, from whom said Nicholson purchased goods. No such invoices were ever delivered to this defendant, nor did the defendant ever see all

the invoices of said Nicholson. The goods which this defendant purchased had been purchased at different times. Some of them were an old supply which had been on hand a long time, and for which his co-defendant showed this defendant no invoices, but only his cost mark and other data of the cost.

This defendant does not know whether all or any part of said invoices are now in possession of said Nicholson or not.

This defendant admits, that about the time of his said purchase of said goods by this defendant from his co-defendant, an account or invoice of his said purchase of goods, &c., was made out by the said Nicholson, and was delivered to this defendant.

That said invoice was delivered to one of his solicitors, S. C. Blauton, when this defendant's answer was being prepared, and from the same the amounts set forth in his original answer were stated. This defendant has made diligent search for said invoice, and as soon as the same can be found, if it has not been lost or mislaid by his solicitor, this defendant will file the same, and no other, as an exhibit to his answer.

This defendant denies that said goods have been long since sold by him at a profit of fifty per cent., or near that amount, over and above New York cost and charges, and expenses on the same to Bastrop; on the contrary, this defendant says, that he sold a great part of them for no more than they cost him; and after deducting trouble and expense of buying and selling, renting, risk in the nature of insurance and loss, the profits were not worth a dispute. He could have done better with new goods.

But even if he had sold the goods at a profit of over fifty per cent. on New York cost, the fact could form no reason why a purchase made in good faith should be set aside; and this defendant claims all the benefit of a demurrer to this part of complainants' bill.

This defendant, further answering, says, that the town lots purchased by this defendant from said Nicholson were not redeemed, but repurchased from this defendant by Mrs. Nicholson; but whether with her own funds or not, this defendant does not know, only as he was assured that they were so purchased from this defendant with the separate funds of said Rebecca; this assurance was made by said James Nicholson. In this matter, however, this (D) defendant has no interest, and prays to be hence discharged.

This defendant cannot see the force of the denial of said complainants that said sale by him was bona fide, nor does he know that it is their office to "deny" the answers of this defendant.

The sale was in good faith, and for a valuable consideration paid to this defendant, all the facts about which have been stated by this defendant. As to the resort to judicial proceedings, this defendant had not, nor intended, any collusion with any one. He was paid for his title, and he has no claim whatever to the property.

This defendant has hereinbefore, and in his answer to the original

bill, as fully answered the first and second interrogatories in the complainants' amended bill.

As to third interrogatory, there are no charges which require him to answer said interrogatory.

Without this, that there are any other matters or things in said amendment not herein admitted, traversed, or denied, is true.

And this defendant, having fully answered, prays to be hence discharged with his reasonable costs. THOS. C. MOORE.

GEO. W. PASCHAL and
S. C. BLAUTON, Sol's.

United States of America, District of Texas.

Before the undersigned, James A. Poage, a commissioner of the United States for the District of Texas, personally appeared Thomas C. Moore, who on oath says that the facts set forth in the foregoing answer are true in substance and in fact.

Subscribed and sworn to before me, this 23d day of March, 1854.

JAMES A. POAGE, Commissioner, &c.

And thereupon, afterwards, to wit, on the first day of May, in the year of our Lord one thousand eight hundred and fifty-four, an entry was made in said cause in the words and of the tenor following, to wit:—

(*Entry at Rules, Appearance Rebecca H. Nicholson.*)

May Rules, 1854. May 1st, 1854.

HENRY SHELDON & Co.
vs.
JAMES NICHOLSON and others. } In Chancery.

The defendant, Rebecca H. Nicholson, by arrangement with the counsel of complainants, enters her appearance and files her answer this day. GEO. W. PASCHAL, Sol. pro Def't.

And thereupon, afterwards, to wit, on the day and year last aforesaid, the said defendant, Rebecca H. Nicholson, by her solicitors, filed her answer in this cause in the words and of the tenor following, to wit:—

(*Answer of Mrs. R. H. Nicholson.*)

HENRY SHELDON & Co.
vs.
JAMES NICHOLSON and others.

In the District Court of the United States for the District of Texas.

The separate answer of Rebecca H. Nicholson, one of the defendants to the above entitled cause.

And the said Rebecca H. Nicholson, saving and reserving unto herself all manner of exceptions to the many uncertainties and imperfections contained in the complainants' bill of complaint, or so

much thereof as she is advised is material for her to make answer unto, for answer to said bill says: That she admits that she is the wife of her co-defendant, James Nicholson; that when she intermarried with her said husband, she had in ready money about the sum of one thousand dollars of her own separate property; that her said husband informed her that he was much pressed for some ready money, and agreed with her to give her in pledge two promissory notes on her other co-defendant, Thomas C. Moore, not then due, for about the sum of five hundred dollars each, for the use of her ready money as aforesaid.

And this defendant further answering says, and alleges that she did give to the said James Nicholson the use of her said money, and took in lieu thereof the said promissory notes of the said Moore. She does not remember distinctly when she made the arrangement, but thinks it was some time during the year 1849 or 1850, and that it was some time afterwards that she surrendered to the said Moore the said notes in discharge of a mortgage which said Nicholson had before that time executed to him on the lots mentioned in complainants' bill and amended bill.

And this defendant further says, that the said Nicholson never paid her any part of the said sum which she advanced him from her own separate property and private funds as aforesaid, and further this defendant says that the whole and only amount which she has realized from said advancement, is the lots mentioned.

This defendant admits that a decree was rendered in her favor by the District Court of Bastrop County, at the Fall term thereof, 1853, compelling the said Moore to make her a deed conveying a good and perfect title to said lots to her; and further this defendant says that her only chance and hope for any kind of indemnity for her advancement to her said husband as aforesaid, is the lots aforesaid, because she says and charges that the said Nicholson is hopelessly and entirely insolvent, and that she has no security from any other source, and that the said lots will not exceed in value the said sum advanced.

And this defendant, for further answer to the said complainants' original and amended bill, *denies expressly* all and all manner of collusion and fraud as between herself and co-defendants, or either of them, or any other person or persons, and all intention or participation in hindering, delaying, or defrauding the complainants or any other person or persons in the security or collection of the debt or debts sued for and demanded by the complainants.

And now having fully answered, this defendant prays to be discharged with her reasonable costs, and for all other and further relief to which she may be entitled, and as in duty bound she will ever pray, &c. PASCHAL & BLAUTON, Sol. for Def't.

State of Texas, County of Harris.

Personally appeared before me, T. B. J. Hadley, commissioner to take affidavits, &c., by the District Court of the United States at

Galveston, Mrs. Rebecca H. Nicholson, who, being duly sworn, says that the matters and things set forth in the foregoing answer which she states of her own knowledge are true, and those she states from the information of others she believes to be true.

R. H. NICHOLSON.

Sworn to and subscribed before me, this 14th April, 1854.

T. B. J. HADLEY, C. A. D. C. U. S.

And thereupon, afterwards, to wit, on the eleventh day of December, in the year of our Lord one thousand eight hundred and fifty-four, the complainants in this cause filed their replication to defendants' answers, in the words and of the tenor following, to wit:—

(*Replication of Complainants.*)

HENRY SHELDON & Co., pl't'ffs,
vs.
JAMES NICHOLSON et al., defendants.

United States District Court, District of Texas.

The plaintiffs in this cause hereby joins issue with the defendants James Nicholson, Thomas C. Moore, and Rebecca H. Nicholson, and will hear the cause on bill, answer, and proofs, against the said defendants.

HAMILTON, CHANDLER & CO.,
Attorneys for pl't'ffs.

And thereupon afterwards, to wit, on the trial of said cause at the November term of said court in the year of our Lord one thousand eight hundred and fifty-five, the following interrogatories and cross-interrogatories, with the answers thereto, were read in evidence in the words and of the tenor following, to wit:—

United States District Court, Austin, Texas.

Between HENRY SHELDON & Co., compl'ts,
vs.
JAMES NICHOLSON and REBECCA H. NICHOLSON and THOMAS C. MOORE, defendants.
} In Chancery.

It is agreed in this case that the parties mutually waive the fact that the cause has not been put at issue; and that the same may be put at issue at the next rule day hereafter.

Further agreed that the answers of the complainants' witnesses, Thomas J. B. Hill, Warren Larkins, and others, to the interrogatories and cross-interrogatories, and of the defendants' witnesses, Hiram Gillespie and others, to the interrogatories and cross-interrogatories may be taken with like effect as though the cause was at issue.

Agreed that said witnesses may be examined before James A.

Poage, commissioner, upon the original interrogatories with the same effect as though a special commission had issued.

Austin, 9th June, 1854.

GEO. W. PASCHAL, pro Compl't.

HAMILTON & CHANDLER, Solicitor for Compl'ts.

(*Interrogatories.*)

District Court of the United States, District of Texas, at Austin.

Between HENRY SHELDON & Co., complainants, and JAMES NICHOLSON and REBECCA H. NICHOLSON and THOMAS C. MOORE, defendants. } In Chancery.

Interrogatories to be exhibited to Thomas J. B. Hill, Warren Larkins, George W. Jones, Robert A. Rutherford, William Dunbar, C. C. M'Ginnis, C. K. Hall, William F. Gamble, Robert H. Hall, Jacob C. Higgins, and Samuel Porter, esquires, witnesses, residing in the county of Bastrop, State of Texas, to be produced, sworn and examined in a certain cause now depending and at issue in the District Court of the United States for the District of Texas, at Austin, in chancery, wherein Henry Sheldon, Nelson Clements and Edward A. Sheldon are complainants, and James Nicholson and Rebecca H. Nicholson, his wife, and Thomas C. Moore are defendants, on the part and behalf of the above-named complainants.

(*Interrogatories to Saml. Porter.*)

Interrogatories to Samuel Porter, a witness residing in the county of Bastrop, State of Texas, for the complainants in the above cause.

First. Are you or not acquainted with the parties, or any and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant James Nicholson to the defendant Thomas C. Moore, about the summer of the year 1851? If so, what amount of the stock of said Nicholson was so sold—whether the whole or some, and what part thereof? At what price above or below New York cost and charges to Bastrop were they sold, and where did said Nicholson and Moore reside at the time? In whose and what employ were you?

Third. What were the pecuniary circumstances of said Nicholson at the time of said sale—whether solvent, failing, or what condition? What knowledge or means of knowledge or information thereof had said Moore, and state how you know the same? Did you or not before or about the time of said sale hear said Nicholson state in the presence of said Moore the condition of his pecuniary affairs—his ability to pay his debts—the cause of his selling said stock of goods; whether or not he was indebted to complainants, and his intentions as to paying, or any of said matters, or matters of like character?

If so, state all that he said on those subjects respectively, and the time, place, and circumstances of the conversation.

Fourth. Were the said goods delivered in the day or night? Were the windows and doors open or shut at the time? Was or not any invoice or account of said goods taken or completed at the time of the delivery? Did you hear any reasons given therefor, or for the time and manner of the delivery, by said Moore and Nicholson, or either, and which of them, and in the presence of the other? Who were present when said goods were turned over?

Fifth. State whether or not said Nicholson was in failing circumstances at the time he made said sale, and whether or not the defendant Moore had any knowledge of the defendant Nicholson being in failing circumstances at the time of said sale. State all you heard the defendant Nicholson say before and at the sale of said stock of goods in the presence of the defendant Moore about his being unable to pay his debts, and the cause of his selling his entire stock of goods. State all that you heard the defendant Moore say before the sale of said goods and for six months thereafter, relative to his knowledge of defendant Nicholson being in failing circumstances, or deeply involved in debt at the date of his purchase of said goods from him, Nicholson. State all the defendant Nicholson said to the defendant Moore, or in his presence, before the sale or during the progress of the same, or during the time of taking an invoice of the goods sold, relative to his being indebted to complainants, and as to his intentions of paying the same. State all said Nicholson said in the presence of or to the said Moore about his selling his property, to prevent complainants making it liable for their debts. When were the goods delivered by defendant Nicholson to defendant Moore? Was it in the day or night time? Who was present at the time of such delivery? In what county and town did the sale and delivery take place? Were the doors and windows open or shut at the time the goods were turned over by Nicholson to Moore? Had the goods been invoiced or an account taken of them at the time they were delivered to Moore? If nay, what reason was given by said Nicholson and Moore, or either of them, in the presence of the other, for the delivery of said goods in the night time and before they were invoiced?

Sixth. Did you or not, previous to or at the time of said sale, or of taking an account of said goods, make any statement or hear any other, and what person or persons make any statement to or in the presence of the said Moore in regard to the pecuniary circumstances and condition of said Nicholson, or his ability to pay his debts, or his indebtedness to complainants, or his intentions as to paying complainants? If so, state all of such conversation and the time, place, and circumstances, fully.

Seventh. Did you or not ever have any conversation with the said Moore before or about the time of said sale, in regard to any indebtedness of said Nicholson to complainants? If so, state the

same fully. Did or not the said Moore speak to you about remaining in the store if he purchased said goods? If so, please state all he said to you at or about that time, respecting any of the matters in relation to which you have been interrogated, or any other matters connected with this suit. HAMILTON & CHANDLER,
Sol'rs for Compl'ts.

Cross-interrogatories to Samuel Porter.

Cross-intg. 1. If you say you know of a sale of the stock of goods of the defendant Nicholson, to the defendant Moore, then say if you do not recollect that all the stock were not sold, but that Warren Larkins purchased a portion for some creditor after the invoicing commenced?

Cross-interrogatory second. Say if you do not know that the defendant Nicholson was not indebted to the defendant Moore, and if so, for how much? And did not said indebtedness form a part of the consideration of said purchase? And if you speak of Moore knowing of any other indebtedness of Nicholson, say if Moore had any knowledge of who the creditors, of how much, or any personal acquaintance whatever with the defendant Nicholson's creditors, the plaintiffs.

Cross-interrogatory third. Say if you had not been for some time, and how long, the clerk of Nicholson. And say whether the stock of goods were not, many of them, old and unsalable; whether they were not the remnants of many years' invoices, and such as would not sell unaided by new supplies. And would not many of them been a dear bargain at cost?

Cross-interrogatory fourth. Say if you did not aid in making up the invoice of said goods. And if so, were they not invoiced at New York cost, as near as you could possibly ascertain from the cost mark and the invoices on hand and accessible? And in arriving at the amount of sale, did you not deduct off or add on the *per cent.* charged above or below the New York cost? And was not this done upon a fair invoice? And now say if, considering the quality of the goods, their staleness, their condition, the manner in which they had been culled, the state of the market, Moore did not pay all that they were worth, as compared with other new goods about that time brought into the Bastrop market? And say if the stock would not have been wholly unsalable by Nicholson without adding to it. And could Moore have paid the necessary rents and clerk's hire and sold said stock so as to cover the cost he gave for them, and the usual profit, without adding to the stock and taking the risk of an untried business?

Cross-interrogatory fifth. Say if you remained as clerk with the defendant, Moore, while he was selling those goods. Say if he purchased new goods and mixed with the stock. And if so, did not said additions add to the facility of selling those purchased of Nicholson? And say if you know of any of said goods having been sold

to any person, and whom, at wholesale. And if so, did not you sell them at the same price Moore purchased them? and did not you consider said sale a good one? Say to whom, and what amount, and had not the purchaser the offer to take all the goods so purchased of Nicholson. Say if you made up the invoice to Hall, and at what rate were the goods charged. And of those not sold to Hall, say how long some of them remained on hand, and were they not forced off, and some of them given away.

Interrogatory sixth. Were not Nicholson's New York invoices, and particularly those of Sheldon & Co., usually charged very high?

Interrogatory seventh. Say whether or not Moore was not a man of fortune, who had, or might easily have, obtained credit in the wholesale market for goods, and thus have bought a stock which he could have sold at a better profit than those purchased of Nicholson. Would you have considered it possible, as a merchant, for you to have taken Nicholson's old stock at cost, and, after paying rents, clerk's hire, and every necessary expense, to have cashed them and made a living profit? Give your opinions—your reasons and your experience as a salesman.

S. C. BLAUTON
and GEO. W. PASCHAL,
Sol's pro Def'ts.

(*Interrogatories to Warren Larkins.*)

Interrogatories to Warren Larkins, a witness residing in the county of Bastrop, State of Texas, in same cause for complainants:—

First. Are you or not acquainted with the parties to this suit, or any, and which, of them?

Second. Do you not know of a sale of a stock of goods by the defendant, James Nicholson, to the defendant, Thomas C. Moore, about the summer of the year 1851? If so, state the amount of said goods. Where did the defendants reside at that time? Where did you reside?

Third. State what was the general reputation of the said Nicholson in the community if you know, where he lived, as to solvency and pecuniary situation previous to and at the time of said sale, and what has it been since.

Fourth. Did you or not ever have any conversation with said Moore previous to the time of said sale in regard to a conveyance or assignment by said Nicholson of his property? If so, state as near as you can the time or times of such conversation, and state fully and particularly all that you said to said Moore on the subject. State particularly whether or not anything, and what, was said as to the objects or motives of said Nicholson as to his pecuniary condition, as to his indebtedness, and to whom, and in what sums. Had you or not any, and if any, what authority from said Nicholson to make the said statements, or any and which of them? Did you or not

ever hear any conversation between any other persons and said Moore on the same or any like subjects? If so, state who said persons were, and state the said conversation, and the time, place, and circumstances. Did you or not ever hear any statement by said Moore previous to the said sale in regard to the pecuniary condition, solvency, or insolvency of said Nicholson? If so, state the same fully; and, if you have heard any similar statements within six months since the said sale, state what they were, and when.

Fifth. Are you or not acquainted with the handwriting of the said Nicholson? Have you or not in your possession, or under your control, any letters or writings purporting to be by said Nicholson relative to the sale of said stock of goods? If so, in whose handwriting are said letters and writings, and how do you know the same? Please attach them to your answer, and mark them so as to identify them as part of your deposition.

HAMILTON & CHANDLER,
Sol's for Compl'ts.

Cross-interrogatories to Warren Larkins.

(Cross-interrogatories to Warren Larkins.)

Cross-interrogatory first. Please if any communication made to you by the defendant Nicholson about the time of his closing his business and selling off his stock to the defendant Moore was not made to you as the attorney of Nicholson, and in the confidence existing between attorney and client.

Cross-interrogatory second. If you answer the complainants' interrogatories without claiming the protection between attorney and client, then please say if you do not know that Moore did not purchase all the stock of Nicholson. And did you not purchase a portion of said goods while the invoices were being made up? And if so, at what cost? For whom did you purchase said goods, and what did you do with them?

Cross-interrogatory third. If in answer to the fifth direct interrogatory you annex any writing of Nicholson, say whether you obtained the same while in the relation of attorney and client.

S. C. BLAUTON,
I. A. & GEO. W. PASCHAL,
Sol's pro Def't.

(*Interrogatories to C. K. Hall.*)

Interrogatories to C. K. Hall, a witness, residing in the County of Bastrop, State of Texas, for the complainants in the same cause.

First. Are you or not acquainted with the parties to this suit, or any, and which of them?

Second. Do you not know of a sale of a stock of goods by the defendant James Nicholson to the defendant Thomas C. Moore about the summer of the year 1851? If so, state the amount of said goods

so sold. Where did the said defendants reside at that time? Where did you reside?

Third. Did you or not know the general reputation of the said Nicholson about that time as to solvency? If so, what was the general reputation of the said Nicholson in the community where he lived as to solvency and pecuniary situation previous to and at the time of said sale, and what has it been since?

Fourth. Where did you live in the year 1851, and what was your occupation? Where did you buy goods in the years 1850 and 1851? Did you or not know, or do you or not know, the wholesale prices of such goods as were sold by said Nicholson to said Moore in the city of New York in the years 1850 and 1851? If so, state as near as you can what the goods sold by Nicholson to Moore were worth in Bastrop at the time of such sale over or under New York cost, and the charges of delivering them in Bastrop. What per cent. will it cost to bring such goods as sold by Nicholson to Moore from the city of New York to Bastrop, Texas?

Fifth. Did you or not ever hear any statement by said Moore previous to said sale in regard to the pecuniary condition, solvency, or insolvency, or indebtedness of said Nicholson? If so, state the same fully, and if you have heard any similar statements within six months, since the said sale, state what they were and when.

Sixth. Did you or not ever have any conversation with the said Moore before or about the time of said sale in regard to any indebtedness of said Nicholson to complainants? If so, state the same fully. Did you or not, previous to or about the time of said sale, have any conversation with said Moore, or hear any person, and what person, make any statement to or in the presence of said Moore in regard to the pecuniary condition and circumstances of said Nicholson, or his ability to pay his debts, or of his indebtedness to complainants, or his intentions as to paying them? If so, state all of such conversation or statement fully, with the time, place, and circumstance.

Seventh. Did you or not ever hear the defendant Moore say how much he made by the purchase of said goods from Nicholson? If so, state all he said at such time or times.

Eighth. Did you or not ever have any conversation with said Moore in regard to Nicholson being alarmed one or more of the nights during the taking an account of the goods sold by Nicholson to Moore? If so, state all that was said. What reason was given for Nicholson being alarmed? Was or not any invoice or account of said goods taken or completed at the time of their delivery? Did you or not hear any reasons given therefor, or for the time and manner of the delivery, by said Moore and Nicholson, or either, and which of them, in the presence of the other?

Ninth. Are you or not acquainted with the handwriting of said Nicholson? If so, please examine the writing or letter attached to

the answers of Warren Larkins, and state in whose handwriting said letters or writing are, and how you know the same.

Tenth. Did you or not ever have any conversation with or hear the defendant, Nicholson, make any statement in regard to the conditions of said sale to said Moore, or as to what interest he retained in the goods or the proceeds thereof after such sale to said Moore, or at the time of such sale? If so, state all of such conversation or statement fully, with the time, place, and circumstances. Who was present?

HAMILTON & CHANDLER,
Sol's for Compl'ts.

Cross-interrogatories to C. K. Hall.

If in answer to the second direct interrogatory to you you say anything about the sale of goods by the defendant Moore to the defendant Nicholson, say if you were present or in Bastrop at the time, or if personally you knew anything about the sale.

Cross-interrogatory second. If you, in answer to the 4th direct interrogatory, give any opinion as to the value of the goods purchased by the defendant Moore of the defendant Nicholson, then say whether you ever examined said stock of goods. If yea, were they not remnants of many old invoices which were greatly culled, and consequently deteriorated in value?

And if, in answer to the 4th direct interrogatory, you say that anything about the value of goods at Bastrop, state your opinion as to the difference between new goods purchased that year and an old stock which had been greatly culled.

And say, in reference to this particular stock, whether or not it would have been possible to have competed with the Bastrop merchants, to have paid rents, clerk's hire, necessary insurance, and expenses, and to have realized a reasonable profit over and above New York cost, without adding other and salable goods to the stock, and thus running all the risks of merchandising. And ought an old and culled stock to be purchased on very reasonable terms to justify making such old stock the foundation of a new business?

Cross-interrogatory third. Say if you purchased any part of said goods from Moore. If yea, did you not purchase by the same invoice and at the same price at which Moore purchased? How many and to what amount did you purchase? Did you not select? And did you find said investment a fortune-making business? Did you not find them unsalable and slow, even when mixed with your new stock? And would they not have been very unprofitable had you not had other goods to mix with them? Have you not got some of the goods yet on hand? And allowing that the whole amount purchased bore their reasonable proportion of your every expense, has not the investment been a rather unprofitable one? And had you taken all at the same price, how could it have been any better?

Cross-interrogatory third. If you speak of any conversation with Moore, say particularly whether they were before or about the time

of the purchase from Nicholson; whether they were loose and general, or particular; and say whether or not he ever mentioned the names of Sheldon & Co., or whether he knew them or not.

Cross-interrogatory fourth. If, in answer to the seventh direct interrogatory, you say that you ever heard the defendant Moore say anything in reference to how much *how much* he made by his purchase from Nicholson, say particularly when and where he made such statements. And say what per cent. he ought to have realized, over and above what he paid, in order to have paid a handsome mercantile profit out of such a speculation.

Cross-interrogatory 5th. If, in answer to the eighth direct interrogatory, you say anything about the goods being invoiced and delivered in the night, say if retail and wholesale arrangements are not frequently consummated in the night, without at least affecting the fairness of the transaction.

Cross-interrogatory sixth. If, in answer to the ninth direct interrogatory, you say that you ever had any conversation with Nicholson about his reserving an interest in the goods sold to Moore, say whether Nicholson was entirely sober at the time. And if he said he retained any such interest, have you not many reasons for believing that he either misunderstood himself or told an untruth?

S. C. BLAUTON,
I. A. & GEO. W. PASCHAL,
Sol's pro Def'ts.

(*Interrogatories to William T. Gamble.*)

Interrogatories to William T. Gamble, a witness residing in the county of Bastrop, State of Texas, for the complainants in the same cause.

First. Are you or not acquainted with the parties to this suit, or any and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant James Nicholson to the defendant Thomas C. Moore, about the summer of the year 1851? If so, state the amount of said goods so sold. Where did the said defendants reside at that time?

Third. State what was the general reputation of the said Nicholson, if you know, in the community where he lived, as to solvency and pecuniary situation previous to and at the time of said sale, and what has it been since that time if you know.

Fourth. Where did you live in the year 1851, and what was your occupation? Where did you buy goods in the years 1850 and 1851? Did you or not know, or do you or not know, the wholesale prices of such goods as were sold by said Nicholson to said Moore in the city of New York, in the years 1850 and 1851? If so, state as near as you can, what the goods sold by Nicholson to Moore were worth in Bastrop, at the time of such sale over or under New York cost, and the charges of delivering them in Bastrop. What per cent. will it

cost to bring such goods as sold by Nicholson to Moore from the city of New York to Bastrop, Texas?

Fifth. Did you or not ever hear any statement by said Moore previous to said sale in regard to the pecuniary condition, solvency or insolvency, or indebtedness of said Nicholson? If so, state the same fully; and if you have heard any similar statement within six months since the said sale, state what they were and when.

Sixth. Did you or not ever have any conversation with the said Moore before or about the time of said sale in regard to any indebtedness of said Nicholson to complainants? If so, state the same fully. Did you or not, previous to or about the time of said sale, have any conversation with said Moore, or hear any person, and what person, make any statement to or in the presence of said Moore in regard to the pecuniary condition and circumstances of said Nicholson, or his ability to pay his debts or of his indebtedness to complainants, or his intentions as to paying them? If so, state all of such conversation or statement fully, with the time, place, and circumstances.

Seventh. Did you or not ever hear the defendant, Moore, say how much he made by the purchase of said goods from Nicholson within twelve months after the date of purchase? If so, state all he said at such time or times.

Eighth. Did you or not ever have any conversation with said Moore in regard to Nicholson being alarmed one or more of the nights about the time of said sale or during the taking an account of the goods sold by Nicholson to Moore? If so, state all that was said. What reason was given for Nicholson being alarmed? Was or not any invoice or account of said goods taken or completed at the time of their delivery? Did you or not have any reasons given therefor, or for the time and manner of the delivery by said Moore and Nicholson, or either and which of them, in the presence of the other?

Ninth. Are you or not acquainted with the handwriting of said Nicholson? If so, please examine the letters or writings attached to the answers of Warren Larkins, and state in whose handwriting said letters or writing are, and how you know the same.

Tenth. Did you or not ever have any conversation with or hear the defendant, Nicholson, make any statement in regard to the conditions of said sale to said Moore, or as to what interest he retained in the goods or the proceeds thereof after such sale to said Moore or at the time of said sale? If so, state all of such conversation or statement fully, with the time, place, and circumstances. Who was present?

HAMILTON & CHANDLER,
Solicitors for Compl'ts.

Cross-interrogatories to William T. Gamble.

Cross-interrogatory first. If, in answer to the first and fourth direct interrogatories, you say you know anything about the stock

of goods of Nicholson, which were purchased by Moore, say whether you had not a short time before said purchase been offered said goods at cost? Whether you did not examine the stock with a view of making said purchase? What amount of said goods did you purchase, and at what prices compared to the New York cost; and why did you not purchase the balance? State when and through how many years the goods had been purchased by Nicholson; with what fairness as to the New York prices; how had they been handled; how had they been culled; what was the merchantable and salable quality of the goods on hand, and the prospect of realizing anything like a reasonable profit over and above New York cost for them. State your belief, and give your reasons, and particularly your reasons for not purchasing.

Cross-interrogatory second. Please say whether or not it would have been possible for the purchaser of the Nicholson stock of goods to have competed with the Bastrop merchants, and to have realized New York cost, after paying rents, insurance, clerk's hire, necessary loss, and every expense, unless the purchaser added new goods, and incurred all the risks of a merchant?

Cross-interrogatory third. If you make any statement in regard to the sayings of Moore, please say if he did not say that his first inducement for purchasing was because he, Nicholson, was in debt to him, said Moore, and that said indebtedness formed part of the consideration.

Cross-interrogatory fourth. Say if you do not know that the defendant, Moore, had a part of the Nicholson stock of goods on hand for a long time? That they were mingled with his new stocks and yet unsalable? That many of them were forced off? And that the stock generally would have been unsalable had they been offered without replenishment?

Cross-interrogatory fifth. State all you know which will benefit the defendants.

S. C. BLAUTON,
GEO. W. PASCHAL,
Sol's pro Def'ts.

(*Interrogatories to George W. Jones.*)

Interrogatories to George W. Jones, a witness residing in the county of Bastrop, State of Texas, in same cause for complainants.

First. Are you or not acquainted with the parties to this suit, or any, and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant, James Nicholson, to the defendant, Thomas C. Moore, about the summer of the year 1851? If so, state the amount of said goods. Where did the said defendant reside at that time? Where did you reside?

Third. State what was the general reputation of the said Nicholson, if you know, in the community where he lived as to solvency

and pecuniary situation previous to and at the time of said sale, and what has it been since.

Fourth. Did you or not ever have any conversation with said Moore previous to the time of said sale in regard to a conveyance or assignment by said Nicholson of his property? If so, state as near as you can the time or times of such conversation, and state fully and particularly all that you said to said Moore on the subject. State particularly whether or not anything, and what, was said as to the objects or motives of said Nicholson, as to his pecuniary condition, as to his indebtedness, and to whom, and in what sums. Had you or not any, and if any, what authority from the said Nicholson to make the said statements, or any, and which of them? Did you or not ever hear any conversation between any other persons and said Moore, or in his presence, on the same or any like subjects, previous to or up to the date of said sale? If so, state who said persons were, and state the said conversations, and the time, place, and circumstances. Did you or not ever hear any statement by said Moore previous to said sale in regard to the pecuniary condition, solvency, or insolvency of said Nicholson? If so, state the same fully, and if you have heard any similar statements within six months since the said sale, state what they were and when.

Fifth. Are you or not acquainted with the handwriting of said Nicholson? If so, please examine the letters or writing attached to the answers of Warren Larkins, and state whose handwriting said letters or writings are, and how you know the same.

HAMILTON & CHANDLER, Sol'rs for Compl'ts.

(*Interrogatories to Rob't A. Rutherford.*)

Interrogatories to Robert A. Rutherford, a witness residing in the county of Bastrop, State of Texas, in same cause for complainants:—

First. Are you or not acquainted with the parties to this suit, or any, and which, of them?

Second. Do you or not know of a sale of a stock of goods by the defendant, James Nicholson, to the defendant, Thomas C. Moore, about the summer of the year 1851? If so, state the amount of said goods. Where did the said defendant reside at that time? Where did you reside?

Third. State what was the general reputation of the said Nicholson, if you know, in the community where he lived, as to solvency and pecuniary condition previous to, and at the time, of said sale, and what has it been since.

Fourth. Did you or not ever have any conversation with said Moore, previous to the time of said sale, in regard to a conveyance or assignment by said Nicholson of his property? If so, state, as near as you can, the time, or times, of such conversation, and state fully and particularly all that you said to said Moore on the subject.

State particularly whether or not anything, and what, was said as to the objects or motives of the said Nicholson as to his pecuniary condition, as to his indebtedness, and to whom, and in what sums. Had you or not any, and if any, what authority from the said Nicholson to make the said statements, or any, and which of them? Did you or not ever hear any conversation between any other persons and the said Moore on the same or any like subject? If so, state who said persons were, and state the said conversation, and the time, place and circumstances. Did you or not ever hear any statement by said Moore, previous to said sale, in regard to the pecuniary condition, solvency, or insolvency of said Nicholson? If so, state the same fully; and if you have heard any similar statements within six months since said sale, *since the said sale*, state what they were, and when.

Fifth. Are you not acquainted with the handwriting of said Nicholson? If so, please examine the letters or writing attached to the answers of Warren Larkins, and state in whose handwriting said letters or writings are, and how you know the same.

Sixth. State whether or not the defendant, Nicholson, ever made an assignmentof his goods, property or effects to you. If so, at what time? and the intrinsic worth or amount so assigned. State the amount of said Nicholson's indebtedness at the time of said assignment if you know. State the amount which has at this time been realized out of said property assigned to you, and the utmost which can be realized out of the same hereafter. If you know, please state in what manner the assignment was made—what was its character, its conditions, if any, and what has been done with the proceeds realized from said property so assigned.

HAMILTON & CHANDLER, Sol'rs for Compl'ts.

Cross-interrogatories Rutherford.

(Cross-interrogatories to Robert A. Rutherford.)

Cross-interrogatory first. If, in answer to the direct interrogatories, you say you had any conversations with Moore relative to his purchase from Nicholson, state if he did not say that his first object was to secure his own debt against Nicholson, and that that was his object in bringing the suit. State if he did not say that he paid over the value of the goods. State what Moore said were his motives in buying. And did he not deny all fraud, and all intention to defraud the creditors of Nicholson?

Cross-interrogatory second. State if you do not know that many of the goods purchased by Moore of Nicholson were on hand a long time and very unsalable.

Cross interrogatory third. State all you know which will benefit the defendant.

S. C. BLAUTON,
J. A. & G. W. PASCHAL,
Sol's pro Def'ts.

(*Interrogatories to William Dunbar.*)

Interrogatories to William Dunbar, a witness residing in the county of Bastrop, State of Texas, in same cause for complainants.

First. Are you or not acquainted with the parties to this suit, or any, and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant James Nicholson to the defendant Thomas C. Moore, about the summer of the year 1851? If so, state the amount of said goods; where did the defendant reside at that time; where did you reside?

Third. State what was the general reputation of the said Nicholson, if you know, in the community where he lived, as to solveney and pecuniary situation previous to and at the time of said sale, and what has it been since?

Fourth. Did you or not ever have any conversation with said Moore, previous to the time of said sale, in regard to a conveyance or assignment by said Nicholson of his property? If so, state as near as you can the time or times of such conversation, and state fully and particularly all that you said to said Moore on the subject. State particularly whether or not anything, and what, was said as to the objects or motives of said Nicholson as to his pecuniary condition, as to his indebtedness, and to whom, and in what sums. Had you or not any, and if any, what authority from said Nicholson to make the said statement, or any, and which of them? Did you or not ever hear any, and what, conversation between any other persons and said Moore on the same or any like subjects? If so, state who said persons were, and state the said conversation, and the time and place and circumstances. Did you or not ever hear any statement by said Moore, previous to said sale, in regard to the pecuniary condition, solvency or insolvency of said Nicholson? If so, state the same fully; and if you have heard any similar statements within six months since the said sale, state what they were, and when.

Fifth. Are you acquainted with the handwriting of said Nicholson? If so, please examine the letters or writing attached to the answers of Warren Larkins, and state in whose handwriting said letters or writing are, and how you know the same.

HAMILTON & CHANDLER,
Sol'rs for Compl'ts.

(*Interrogatories to Jacob Higgins.*)

Interrogatories to Jacob Higgins, a witness residing in the county of Bastrop, in the same case for complainants.

First. Are you acquainted with the parties to this suit, or any, and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant Nicholson to the defendant Moore, about the summer of 1851? If so, state the amount of said goods; to whom did he

sell? where did said defendants reside at that time? where did you reside?

Third. If you know, please state what the general reputation of the said Nicholson was in the community where he lived as to solvency and pecuniary situation, previous to and at the time of said sale, and what has it been since.

Fourth. Did you or not ever carry any communication or communications, written or verbal, from either of the defendants to the other, previous to or about the time of said sale, relating to the sale of said goods and property, or to either? If so, please state such communication or communications, as near as you can, with the time, place and circumstances.

Fifth. Did you or not ever have any conversation with said Moore previous to said sale in regard to the pecuniary condition, solvency or insolvency, indebtedness, or failing circumstances of said Nicholson? If so, state the same fully, and if you have had any similar conversation since the said sale, within six months, state what it was and when.

Sixth. Did you or not ever hear the defendant, Moore, make any statement to you or in your presence, relative to the solvency, insolvency, indebtedness or failing circumstances of said Nicholson at the date of said sale or about that time? If so, state the same fully.

Seventh. Did you or not ever make any statement, or hear any one else make a statement in the presence of said Moore, previous to or during the progress of said sale, relative to the pecuniary condition, solvency or insolvency, indebtedness or failing circumstances of said Nicholson? If so, please state as near as you can all of such statement, with the time, place and circumstances.

Eighth. Did you or not ever give any information, or hear any one else give any information to the said Moore relative to the pecuniary condition, solvency or insolvency, indebtedness or failing circumstances of the said Nicholson? State particularly whether or not you or any one else made a statement made in the presence of said Moore relative to the indebtedness of said Nicholson to complainants. If so, state the same fully.

Ninth. Did you or not ever hear the said Moore make a statement as to the reason of said Nicholson selling his stock of goods and other property? If so, state the same fully, with time, place and circumstances.

HAMILTON & CHANDLER,
Sol'rs for Compl'ts.

Cross-interrogatories to Jacob Higgins.

Do you not recollect that in all the conversations which Moore ever had with you, he always protested and said that the transaction in purchasing the goods of Nicholson was fair on his part? That the first object was to secure his debt? That he had no intention to defraud the creditors of Nicholson? That his first object was to secure his own debt? That the goods were high, unsalable

and a bad bargain? Did he not say all these things and many more of the same sort?

Cross-interrogatory second. Say if Nicholson did not offer you this same stock of goods at New York cost; and why you did not purchase them. State the then condition of said goods, their age, how had they been bought, how culled, how handled, how culled, what were they then worth compared with the New York cost, the purchaser taking every risk and expense of selling. State particularly and give your reasons.

Cross-interrogatory third. State all you know which will benefit the defendants.

S. C. BLAUTON.
I. A. & G. W. PASCHAL.

(*Interrogatories to C. C. McGinnis.*)

Interrogatories to C. C. McGinnis, a witness residing in the county of Bastrop, State of Texas, in same cause for complainants.

First. Are you or not acquainted with any of the parties to this suit, or any and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant, James Nicholson, to the defendant, Thomas C. Moore, about the summer of the year 1851? If so, state the amount of said goods; where did the said defendants reside at that time? Where did you reside?

Third. If you know, please state what the general reputation of the said Nicholson was in the community where he lived as to solvency and pecuniary situation previous to and at the time of said sale, and what has it been since?

Fourth. Did you or not ever have any conversation with said Moore previous to the time of said sale in regard to a conveyance or assignment of said Nicholson of his property? If so, state as near as you can the time or times of such conversation; and state fully and particularly all that you said to said Moore on the subject. State particularly whether or not anything, and what, was said as to the objects or motives of said Nicholson, as to his pecuniary condition, as to his indebtedness, to whom, and in what sums. Had you or not any, and, if any, what authority from the said Nicholson to make the said statements, or any, and which of them? Did you or not ever hear any conversation between any other persons and said Moore on the same or any like subjects? If so, state who such persons were, and state the said conversation with the time, place, and circumstances. Did you or not ever hear any statement made by the said Moore previous to said sale in regard to the pecuniary condition, solvency, or insolvency of said Nicholson? If so, state the same fully; and if you have heard any similar statements within six months since the said sale, state what they were and when.

Fifth. Are you or not acquainted with the handwriting of said Nicholson? If so, please examine the letters or writing attached to

the answers of Warren Larkins, and state in whose handwriting the same are, and how you know.

HAMILTON & CHANDLER,
Sol'rs for Compl'ts.

Cross-interrogatories to C. C. McGinnis.

Cross-interrogatory first. Please state if any communication made to you by the defendant, Moore, contemplated by the direct interrogatories of complainant, were not made while you were acting as the attorney for Moore, and in the confidence of attorney and client.

Cross-interrogatory second. Please, if you do not protect yourself by the confidential privileged communications of your client, to say whether, at the time of the sale of Nicholson to Moore, he, Nicholson, was not indebted to Moore, and did not Moore say that his first object was to secure his own debt, and was not that the principal cause of Moore making the purchase?

Cross-interrogatory third. Do you not know that the stock of goods of Nicholson had before been offered at cost? That they were the remnants and remainders of old purchases, and that many of them remained upon Moore's hands a long time?

Cross-interrogatory fourth. Please state any and every other fact which will benefit the defendants.

S. C. BLAUTON,
I. A. & GEO. W. PASCHAL,
Sol's pro Def'ts.

(*Interrogatories to Thos. J. B. Hill.*)

Interrogatories to Thos. J. B. Hill, a witness residing in the County of Bastrop, State of Texas, in same cause for complainants.

First. Do you or not know the parties to this suit, or any, and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant, James Nicholson, to defendant, Thomas C. Moore, about the summer of the year 1851? If so, state what amount of the stock of goods of the said Nicholson was so sold, whether the whole or some part, and what part thereof. Where did said defendants, Moore and Nicholson, reside at that time? and where were the goods when sold by Nicholson to Moore? Where did you then reside?

Third. What were the pecuniary circumstances of said Nicholson at the time of said sale—whether solvent, failing, or in what condition? What knowledge or means of knowledge or information thereof had said Moore, and state how you know the same? Did you or not, before or about the time of said sale, hear said Nicholson state, in the presence of said Moore, the condition of his pecuniary affairs, his ability to pay his debts, the cause of his selling said stock of goods, whether or not he was indebted to complainants, and his intentions as to paying, or any of said matters, or matters of like

character? If so, state all that he said on those subjects respectively, and the time, place, and circumstances of the conversation, if you know.

Fourth. Did you or not ever have any conversation with Moore, or hear said Moore make any statement, previous to, about the time, or since said sale, in regard to a conveyance or assignment by said Nicholson of his property, or any part of it? If so, state as near as you can the time or times of such conversation or statements, and state fully and particularly all you said to said Moore or heard said Moore say on the subject. State fully and particularly what, if anything, was said as to the objects and motives of said Nicholson, as to his pecuniary condition, as to his indebtedness, and to whom, and in what sums.

Fifth. Did you or not ever hear the defendant Moore, previous to, about the time, or within six months subsequent to said sale, make any statement relative to the solvency, insolvency, indebtedness, failing circumstances, or pecuniary condition of said Nicholson, before or at the time that he, Nicholson, sold said stock of goods to him, Moore? If so, state the same fully, with time, place, and circumstances, if you know.

HAMILTON & CHANDLER, Sol'rs for Compl'ts.

Cross-Interrogatories to Thomas J. B. Hill.

(Cross-interrogatories to Thomas J. B. Hill.)

Cross-interrogatory first. If, in answer to the direct interrogatories, you speak of the sayings of Nicholson to Moore, please state if they were not uniformly accompanied by the remark that he, Nicholson, had an abundance to pay his debts, and that he only desirous to obtain time upon them; and that if he could obtain such time he would be able to meet them.

Cross-interrogatory second. Please say whether or not you ever carefully examined the stock of goods which Moore purchased of Nicholson. What was the condition of the same? How, when, and where had they been purchased, and at what comparative rates as to being cheap or dear? And what per centum over and above New York cost were they in fact worth? State the facts, your means of knowledge, and your reasons.

Cross-interrogatory third. Say if you became a partner of the defendant Moore soon after he purchased the stock of Nicholson. If yea, state if you an invoice on hand of the purchase, and at what rate above or below New York cost were the goods purchased. Did Moore charge the goods to the firm of Moore and Hill at the same price he purchased the goods of Nicholson?

How did you succeed in selling the stock, and at what profit? Did you sell any part at wholesale, and to whom? When, where, what amount, and at what profit or loss? How long did many of the others remain on hand, and how were they forced off?

the answers of Warren Larkins, and state in whose handwriting the same are, and how you know.

HAMILTON & CHANDLER,
Sol'rs for Compl'ts.

Cross-interrogatories to C. C. McGinnis.

Cross-interrogatory first. Please state if any communication made to you by the defendant, Moore, contemplated by the direct interrogatories of complainant, were not made while you were acting as the attorney for Moore, and in the confidence of attorney and client.

Cross-interrogatory second. Please, if you do not protect yourself by the confidential privileged communications of your client, to say whether, at the time of the sale of Nicholson to Moore, he, Nicholson, was not indebted to Moore, and did not Moore say that his first object was to secure his own debt, and was not that the principal cause of Moore making the purchase?

Cross-interrogatory third. Do you not know that the stock of goods of Nicholson had before been offered at cost? That they were the remnants and remainders of old purchases, and that many of them remained upon Moore's hands a long time?

Cross-interrogatory fourth. Please state any and every other fact which will benefit the defendants.

S. C. BLAUTON,
I. A. & GEO. W. PASCHAL,
Sol's pro Def'ts.

(*Interrogatories to Thos. J. B. Hill.*)

Interrogatories to Thos. J. B. Hill, a witness residing in the County of Bastrop, State of Texas, in same cause for complainants.

First. Do you or not know the parties to this suit, or any, and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant, James Nicholson, to defendant, Thomas C. Moore, about the summer of the year 1851? If so, state what amount of the stock of goods of the said Nicholson was so sold, whether the whole or some part, and what part thereof. Where did said defendants, Moore and Nicholson, reside at that time? and where were the goods when sold by Nicholson to Moore? Where did you then reside?

Third. What were the pecuniary circumstances of said Nicholson at the time of said sale—whether solvent, failing, or in what condition? What knowledge or means of knowledge or information thereof had said Moore, and state how you know the same? Did you or not, before or about the time of said sale, hear said Nicholson state, in the presence of said Moore, the condition of his pecuniary affairs, his ability to pay his debts, the cause of his selling said stock of goods, whether or not he was indebted to complainants, and his intentions as to paying, or any of said matters, or matters of like

character? If so, state all that he said on those subjects respectively, and the time, place, and circumstances of the conversation, if you know.

Fourth. Did you or not ever have any conversation with Moore, or hear said Moore make any statement, previous to, about the time, or since said sale, in regard to a conveyance or assignment by said Nicholson of his property, or any part of it? If so, state as near as you can the time or times of such conversation or statements, and state fully and particularly all you said to said Moore or heard said Moore say on the subject. State fully and particularly what, if anything, was said as to the objects and motives of said Nicholson, as to his pecuniary condition, as to his indebtedness, and to whom, and in what sums.

Fifth. Did you or not ever hear the defendant Moore, previous to, about the time, or within six months subsequent to said sale, make any statement relative to the solvency, insolvency, indebtedness, failing circumstances, or pecuniary condition of said Nicholson, before or at the time that he, Nicholson, sold said stock of goods to him, Moore? If so, state the same fully, with time, place, and circumstances, if you know.

HAMILTON & CHANDLER, Sol'rs for Compl'ts.

Cross-Interrogatories to Thomas J. B. Hill.

(Cross-interrogatories to Thomas J. B. Hill.)

Cross-interrogatory first. If, in answer to the direct interrogatories, you speak of the sayings of Nicholson to Moore, please state if they were not uniformly accompanied by the remark that he, Nicholson, had an abundance to pay his debts, and that he only desirous to obtain time upon them; and that if he could obtain such time he would be able to meet them.

Cross-interrogatory second. Please say whether or not you ever carefully examined the stock of goods which Moore purchased of Nicholson. What was the condition of the same? How, when, and where had they been purchased, and at what comparative rates as to being cheap or dear? And what per centum over and above New York cost were they in fact worth? State the facts, your means of knowledge, and your reasons.

Cross-interrogatory third. Say if you became a partner of the defendant Moore soon after he purchased the stock of Nicholson. If yea, state if you an invoice on hand of the purchase, and at what rate above or below New York cost were the goods purchased. Did Moore charge the goods to the firm of Moore and Hill at the same price he purchased the goods of Nicholson?

How did you succeed in selling the stock, and at what profit? Did you sell any part at wholesale, and to whom? When, where, what amount, and at what profit or loss? How long did many of the others remain on hand, and how were they forced off?

Calculating the time, expenses, risk, and every fact connected with it, what profit was made upon the purchase?

Could the firm have purchased goods on a credit upon their own notes, and at what comparative advantage?

Cross-interrogatory fourth. Please state to whom Nicholson transferred the notes of Moore, and to whom were they paid. And state all you know which will benefit the defendants. And if you have given any conversations of Moore, now relate the whole of said conversations.

S. C. BLAUTON,
I. A. & GEO. W. PASCHAL,
Sol's pro Def'ts.

(*Interrogatories to Rob't H. Hall.*)

Interrogatories propounded to Robert H. Hall, a witness, residing in the county of Bastrop, in same case for the complainants—

First. Are you acquainted or not with the parties to this suit, or any, and which of them?

Second. Did you or not ever buy a note or notes from the defendant, Nicholson? If so, please state if you or not ever bought one executed by defendant Moore to defendant Nicholson. If so, state the amount of money said note called for on its face. When was said note dated? When payable, and to whom payable? What consideration did you pay for the same? Did you or not ever have any conversation with said Moore relative to said note, the consideration for which it was given, &c.? If so, please state fully and particularly all such conversation or conversations, with time, place, and circumstances. Did you or not ever have any conversation with said Moore relative to the pecuniary condition, indebtedness, solvency, or insolvency of said Nicholson about the time said note was executed? If so, state the same fully. Did you or not ever hear any statement made by said Moore relative to his (Moore's) knowledge of Nicholson being in failing circumstances, or being broke at the time he (Moore) bought said Nicholson's goods and other property, and why he (Moore) bought said goods and other property of Nicholson? If so, state fully and particularly, as near as you can, all such statement with the time, place, and circumstances.

Third. Did you or not ever have any conversation with the defendant Moore relative to the pecuniary condition of said Nicholson at the time he sold his goods and other property to said Moore? If so, please state all such conversation. Did you or not ever hear said Moore make a statement as to the motives or intentions of said Nicholson in selling his goods in the manner he did? If so, please state all of such conversation or conversations, with the time, place, and circumstances. Did you or not ever hear defendant Moore make any statement as to how much he made by the purchase of said Nicholson's goods and other property? If so, please state what it was.

Fourth. Did you or not ever hear the defendant Nicholson make a statement as to the character of the sale from him to Moore, and what the conditions of said sale were, if any? If so, please state all of such conversation or statement with time, place, and circumstances.

Are you or not acquainted with the handwriting of defendant Nicholson? If so, please examine the letter or writing marked Exhibit B, attached to the answers of Warren Larkins, and state in whose handwriting the same is if you know.

HAMILTON & CHANDLER,
Sol'rs for Compl'ts.

(*Interrogatories and Cross-interrogatories of H. Gillespie and L. C. Cunningham.*)

Between HENRY SHELDON & Co., Complainants,
and
JAMES NICHOLSON, REBECCA H. NICHOLSON, his wife, and THOMAS C. MOORE, Defendants. } In Chancery.

Interrogatories to be exhibited for the examination of witnesses, to be produced and sworn in a certain cause now depending in the United States District Court for the District of Texas, at Austin, on the chancery side thereof, wherein the said Henry Sheldon and company are complainants, and the said Nicholson and Moore are defendants, viz.—

Interrogatories for the examination of Hiram Gillespie and L. C. Cunningham, and who reside in the town of Bastrop, in said State of Texas.

First, to Hiram Gillespie. Please say whether or not you were acquainted with the stock of goods which the defendant, Thomas C. Moore, purchased of the defendant, James Nicholson, some time during the year 1851. If yea, state your means of knowing the same, your experience as a merchant, what examination you gave to them. When, where, and through how many years had they been purchased by Nicholson. How had they been kept and handled. What was their condition, and what their value, as compared with the invoice, original prices thereof.

Interrogatory 2d. Say whether def't Moore, after he purchased said goods, offered you any, and what interest in the same, upon what terms? What examination did you make of the goods, and his terms of purchase, and why did you not accept of his offer?

Interrogatory third. Say if you know how long said Moore kept any, and what portion of said goods on hand. What was the possibility of competing with other Bastrop merchants and selling at a reasonable profit, without replenishing the stock? and say whether or not, in your opinion, it would have been impossible for the def't Moore to pay all expenses, rents, insurance, clerk's hire, necessary losses, and to have realized a reasonable profit upon said goods, without adding to the stock, and thus incurring all the risks of mer-

chandise, and say what net profit the investment ought to have paid to have made it a remunerating business.

Interrogatory fourth. Do you know, or can you set forth, any matter or thing which may be of benefit or advantage to the parties at issue in said cause, or either of them, or that may be material to the subject matter of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

S. C. BLAUTON,
And I. A. & GEO. W. PASCHAL,
Sol's pro Def'ts.

Cross-interrogatories to Hiram Gillespie.

(Cross-interrogatories to H. Gillespie.)

First. What was the pecuniary circumstances of said Nicholson about the time he sold his stock of goods to Moore, whether solvent, insolvent, indebtedness, or failing circumstances—and what knowledge, or means of knowledge, of the pecuniary condition of the said Nicholson had the said Moore, and how you know the same? Did you or not, at or about the time of said sale, hear the said Nicholson, or any other person, and what person, state to or in the presence of the said Moore, the condition pecuniarily of said Nicholson, his ability to pay his debts, his motives and intentions for selling his goods and property; whether or not he was indebted to complainants, and his intentions as to paying, or any of said matters, or matters of like character? If so, state all that he said on those subjects respectively, or on subjects of like import, with the time, place, and circumstances.

Please state whether or not previous to, at, or about the time of said sale, or within six months thereafter, you ever heard the defendant Moore make a statement to you, or to any other person, relative to his knowledge of the pecuniary condition of said Nicholson before, or at the time of said sale, his ability to pay his debts, his solvency or insolvency, failing circumstances or otherwise? If so, state the same fully, with time, place, and circumstances.

Please state whether or not the def'd't Moore ever told you, or stated in your presence, the motives or intentions of said Nicholson in selling his stock of goods; whether or not it was to evade, prolong, or hinder the collections of debts owing by said Nicholson to complainants, or to other persons than him; and what said Moore said to you relative to the honesty of said Nicholson in said transaction, and generally all that said Moore said to you relative to the transaction, his knowledge of the pecuniary condition of said Nicholson, and his ability to meet his liabilities.

HAMILTON & CHANDLER,
Sol's for Compl'ts.

Second, to L. C. Cunningham and J. C. Radford.

First interrogatory. Please say whether or not you are acquainted with the stock of goods which def'd't, Thomas C. Moore, purchased of the def'd't James Nicholson, some time during the year 1851; if yea, state your means of knowing the same, your experience as a merchant, what examination you gave to them, when, where, and through how many years had they been purchased by Nicholson. How had they been kept and handled? What was their condition, and what was their value as compared with the invoice original value thereof?

Interrogatory 2d. Say if you know how long said Moore kept any, and what portions, of said goods on hand. What was the possibility of competing with other Bastrop merchants, and selling at a reasonable profit, without replenishing the stock? And say whether or not, in your opinion, it would have been possible for the def't Moore to have paid all expenses, rents, insurance, clerk's hire, necessary losses, and to have realized a reasonable profit upon said goods, without adding to the stock, and thus incurring all the risks of merchandise, and say what net profits the investment ought to have paid to have made it a remunerating business.

Interrogatory 3d. Do you know or can you set forth any matter or thing which may be of benefit or advantage to the parties at issue in said cause, or either of them, or that may be material to the subject matter of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

S. C. BLAUTON,
I. A. & GEO. W. PASCHAL,
Sol'rs pro Def'ts.

(*Interrogatories to Wilson Kenneday.*)

Third. Interrogatories for the examination of Wilson Kennady.

First interrogatory. Please say if you know anything, and what, relative to the purchase of the stock of goods by the def't Moore, of the def't Nicholson. If so, where, when, what amount? At what data were the prices ascertained? By whom was the invoice made up, and what was the aggregate amount? What were your opportunities of knowing the fairness of the transactions? And state its character for fairness and honesty. State all the circumstances.

Interrogatory second. Do you know, or can you set forth, any matter or thing which may be of benefit or advantage to the parties at issue in said cause, or either of them, or that may be material to the subject matter of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answers.

S. C. BLAUTON,
I. A. & GEO. W. PASCHAL,
Sol's pro Def'ts.

Cross-interrogatories to Wilson Kennedy.

First. State, if you know, what was the pecuniary condition of said Nicholson at the time he sold his stock of goods to said Moore. What knowledge, or means of knowledge or information, had said Moore of the pecuniary condition of said Nicholson? Did you or not ever hear the said Nicholson, or any other person, and what person, state to or in the presence of said Moore what the pecuniary condition of said Nicholson was, his solvency or insolvency, indebtedness, or ability to pay his debts, at or about the time of said sale? If so, state the same fully. Did you or not ever hear said Moore say what was, or what knowledge he had of, the pecuniary condition of said Nicholson at or about the time he sold his stock of goods to said Moore? When were the goods turned over to Moore, whether in the day or night time? Whether before or after the invoice was made and completed, and what were the reasons given either by the said Moore or Nicholson for the time and manner of the delivery? State whether or not you ever heard said Nicholson say what his motives or intentions were, in the presence of said Moore, for selling or disposing of his said goods. Whether or not it was to evade, prolong, hinder, or delay the collection of complainants' debt, or the debts of third persons, and whom.

Int. 2. State whether or not you ever heard the def't Moore say or admit that he knew that Nicholson made the sale to him (Moore) with purpose and intention of evading, hindering, prolonging, and delaying the recovery of the debt of complainants.

HAMILTON & CHANDLER,
Sol'rs for Compl'ts.

(*Answers to Interrogatories and Cross-interrogatories.*)

United States of America, District of Texas, in the District Court of the United States.

HENRY SHELDON, NELSON CLEMENTS, and EDWARD A. SHELDON, Compl'ts,
vs.
JAMES NICHOLSON, REBECCA H. NICHOLSON, and THOMAS C. MOORE, Def'ts.

(*Commissioner's Oath.*)

I, James A. Poage, a citizen of Bastrop County in the State of Texas, do solemnly swear that I will, according to the best of my skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, or any other cause, take the examinations and depositions of all and every witness and witnesses produced, and examine upon the interrogatories and cross-interrogatories delivered to me, and I will not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses, or any of them to be taken

by me, until publication shall pass pursuant to some general or special order of the court wherein the same are taken; so help me God.

JAMES A. POAGE.

The State of Texas, County of Bastrop.

Personally appeared before me, William H. Garrett, Chief Justice of said county, and presiding officer of the County Court of said county, which is a court of record, James A. Poage, to me well known, and being by me sworn, makes oath to and subscribes the above affidavit signed by him.

Given under my hand and the seal of the County Court of said county of Bastrop, affixed this 20th day of June, A. D. 1854.

[SEAL.] WILLIAM H. GARRETT,
Chief Justice of Bastrop County, Texas.

State of and District of Texas, County of Bastrop.

Depositions of witnesses proven, sworn, and examined on the day of A. D. 1854, at my office in the town of Bastrop, in the county of Bastrop, in the State of Texas, by virtue of a commission issued out of the District Court of the United States for the district of Texas, in chancery, to me, James A. Poage, directed, for the examination of witnesses in a case there pending in chancery between Henry Sheldon & Co., complainants, and James Nicholson, Rebecca H. Nicholson, and Thomas C. Moore, are defendants, I, James A. Poage, acting commissioner under the said commission, having first duly taken the oath to the said commission, and according to the tenor and effect thereof, and as thereby directed.

(*Answer of W. Larkins.*)

On the part and behalf of the said complainants.

Warren Larkins, of the county of Bastrop, and State of Texas, aged 28 years, was produced and by me sworn on the Holy Evangelists of Almighty God, and examined on the part and behalf of the complainants, and he deposes and says as follows:—

In answer to the first interrogatory to him adduced and by me propounded he says. That he is acquainted with Nelson Clements, one of the complainants, but not with the other complainants; and he is acquainted with the defendants.

2d. To the second interrogatory to him propounded he says. That he does know that a sale of goods took place, and was made be the defendant James Nicholson to the defendant Thomas C. Moore in the summer of the year 1851. He says there was several thousand dollars' worth, but don't know the exact amount of goods. The defendants resided at that time in the town and county of Bastrop, Texas, and he resided at the same place.

3d. To the third interrogatory to him propounded he says. That the general reputation of the said defendant Nicholson was not good

for a short time previous to and at the time of the said sale, and laboring under pecuniary embarrassments at the time; and he, said Nicholson, has been considered utterly insolvent since the time of said sale.

4th. To the fourth interrogatory to him propounded, he says: A short time previous to said sale made by Nicholson to Moore, he was acting as the attorney for T. W. House, Esq., of Houston, Texas, in making a settlement with James Nicholson, who was at the time owing said House about the sum of ten thousand dollars. He was instructed to force the settlement of the claim immediately, and called upon Nicholson and demanded payment. Nicholson having previous to this time made an assignment or mortgage of a portion of his goods, which were *in transitu* from New York, to secure a debt due to Peet, Sims & Co. of New Orleans, and owing other sums at the time, told me he could manage to secure the claim of House held by me, but that it would leave him in so embarrassed a condition that he feared that his storehouse would be closed by certain large creditors in New York, among whom was mentioned the firm of Henry Sheldon & Co., to whom a large amount was due, and that he felt unwilling to see them come down on him and appropriate his effects to the exclusion of a large amount of home and other debts, which he thought ought to be preferred under the circumstances. After he had made arrangements to secure the debt due T. W. House, Esq., he suggested to Nicholson the propriety of makir n assignment to some one, in which assignment provision could e made to pay those creditors whom he wished to favor. He suggested to Nicholson the name of Thomas C. Moore, one of the defendants, whom he deemed a suitable man to close up the business. Whilst Nicholson and myself were talking on the subject, we saw Mr. Moore in the street and called him in, and Mr. Nicholson proposed to him to accept an assignment of his effects as stated above. Mr. Moore said that he would take the matter under advisement. He thinks it was on the next day he was instructed to draw up a deed of assignment, the parties stating that they had agreed upon the terms, which was that Mr. Moore should take an assignment of all Nicholson's effects, and pay his debts so far as they would go, giving preference to certain claims therein specified.

Being taken suddenly sick, he requested John Marshall, Esq., to draw up the assignment, which he did, and left at my office. A short time afterwards, Mr. Moore called to see him and told him that he had concluded not to take an assignment, but had purchased the goods absolutely of Nicholson.

The conversation in which the subject was introduced to Moore was several days before he (witness) was informed by Moore that he had made the purchase.

The objects and motives of Nicholson, as explained to Moore at the time of the introduction of the subject to said Moore, were to secure creditors of Nicholson against loss, as he, Nicholson, found

unless he did so all his property would be absorbed by his large New York creditors, especially Henry Sheldon & Co., to whom he, Nicholson, said he was largely indebted.

He (witness) does not recollect whether he heard any conversation between Moore and other persons on the subject, and he, witness, does not think he ever heard Moore express himself in regard to the pecuniary condition of Nicholson previous to the time stated in the first part of my answer to this interrogatory.

5th. To the fifth interrogatory to him propounded, he says. That he is acquainted with the handwriting of James Nicholson, the defendant. And he, witness, has in his possession a letter from James Nicholson, dated, "Bastrop, July 18th, 1853," written to F. W. Chandler, Esq., Austin, to which is attached by wafers a memorandum written by James Nicholson on the subject of said sale. The letter and memorandum attached thereto will be found attached to these answers and marked Exhibit A. The letter and the memorandum are both in the handwriting of the defendant, James Nicholson. They were handed to him (witness) by Mr. Chandler, with a request that he, witness, should examine them, and if he knew whose handwriting they were in, he, witness, should attach them to his answer to certain interrogatories which would be propounded to him, witness, in the case now between the complainants and defendants titled at the caption of these answers. WARREN LARKINS.

Cross-interrogatories.

And the said Warren Larkins deposes and says, as follows: In answer to the cross-interrogatories to him adduced and by me propounded, he says:—

1st. That to the first cross-interrogatory he has stated the circumstances under which the conversation took place. He was at the time acting as the attorney for T. W. House, Esq.; this led him into a knowledge of the facts; his advice to Mr. Nicholson was in the nature of friendly counsel, rather than as attorney. He (witness) never charged Nicholson anything for the advice he gave him (Nicholson); he (Nicholson) never agreed to pay him (witness) anything for it; he (Nicholson) never followed his advice.

2d. To the second cross-interrogatory, he says, Mr. Moore did not purchase all the goods which were in the store of Nicholson at the time of the sale; there was a large lot of domestics in bales; he (witness) believes about twelve bales, which he (witness) had agreed to take in part liquidation of the claim of T. W. House, at New York prices; there was also a very large box of winter goods, blankets, &c., which were also taken by him (witness) at five hundred dollars for the lot.

These goods he (witness) afterwards had removed from the store, and they were disposed of for the benefit of T. W. House.

3d. To the third cross-interrogatory, he says, that he has already

stated he obtained the letter and memorandum hereto attached, marked (Exhibit A), from F. W. Chandler, Esq., and the circumstances under which he obtained it. WARREN LARKINS.

And I, James A. Poage, the commissioner aforesaid, do certify that I reduced the above foregoing deposition to writing in the presence of the witness, and read the same to him. Whereupon he subscribed his name thereto as above written.

JAMES A. POAGE, Commissioner.

Exhibit A.

Bastrop, July 18th, 1853.

F. W. Chandler, Esq., Austin.

Dear Sir: On Saturday there was a meeting in our Masonic Lodge, at which place I expected to see Mr. Porter, and have a *prudent* and *private* conversation with him, so as to elicit from him his knowledge of the matter of your enquiry, but I was disapointed. This is the reason I did not write you last mail. I will now proceed to answer your questions as explicit as time and circumstances will admit, for circumstances consider I am attending store for Mr. Subbock, he absent and but a few words can I write without interuption.

Mr. Moore did not come to me first; Seeing him as I did conversing on the street with some person; I suggested to a friend with whom I was in conversation about my affairs the propriety of selling to Moore, as he apparently was a friend of mine; the answer of the friend was, that it was a good suggestion, and if I sold to him he was a man of nerve and would stick to me; from this I sent that friend to speak to Moore, who conceded to the proposition to purchase; the purchase was made under circumstances that will be brought out in court.

Mr. Porter is an important witness on oath in court, he will state facts; in regard to the sale I have nothing further to state than what I told you, the substance this: If my stock was purchased by him, I would let him have it at cost—this did not suit; I then said 10 per cent. below cost—no agreement; I then said 20 or 25—Moore did not agree, but afterwards came to me and said, my friend said I ought to sell him the stock at 30 per cent. below New York cost, and if I did so he would share with me the profits, as it was necessary for every man to protect himself and family; that I should make provisions to pay all my Texas debts, those I preferred in N. York, but Sheldon's I ought to leave to the last, as Clements, their jr. partner, induced me to pay the high price of 12½ cents per pound for cotton, on which transaction I lost all my means, and am ruined.

The town lots were purchased by Moore, but subject to redemption at same price as paid; in full value did my wife redeem the lots where my father lives, as was decreed last court. A 3 acre lot in the possession of Moore, subject to redemption, was at my request

deeded to the late sheriff for a debt I had neglected to add into the schedule of assets.

I cannot conclude without expressing my gratitude for your kindness, expressed and implied. There are many facts can be exacted from myself and Porter under oath in a court of justice, which would be improper to indite. I wish everything to come out, that I may clear myself before the world of supposed villainy. Once clear, I will show you an experienced man, one whose mind has been dejected by *forced secrecy* of facts, to screen his supposed friend.

Yours truly, JAMES NICHOLSON.

The stage is here. Please excuse the hurried manner of this.

J. N.

(*Memorandum.*)

At the time of my difficulties I was informed that I might be closed up by any one holding a small foreign claim, the goods sold at a sacrifice to liquidate it, and nothing left for other creditors. Sick and partly crazy with study, I knew not how to act, but threw myself on friends for advice; was advised to sell my stock, and make an assignment; that M—— would be a good person to sell to; spoke to him; he was willing, but said that I should sell them for something less than cost; offered them at New York prices, which would be ten per cent. less than actual cost here; he said he would consider of it; afterwards came and said I ought sell them for less; I then considered myself; he then told me he had been speaking to some of my friends, and they advised me to let them go at 30 per cent. below N. Y. cost, and that I had better do it, and if he made anything he would share it with me—or perhaps he first said he would give me something handsome, but afterwards said he would share it; during last court week he told me he was going to make something out of the goods; that he would share it with me, as it was always his intention.

T. B. J. H. afterwards went into partnership with M——; as no stock was taking at the time of copartnership, I thought the interest commenced at first, so H—— as well as M—— had the benefit of the discount.

The sale was to Moore in a lump, delivered before witness Porter, to commence next day to take stock; when invoice was made out, to discount 30 per cent., pass it over to assignee. Moore then proposed to give it in small notes, payable at various times; that before assignment I could pay off some particular debts with the notes. All of which was done.

Moore and Hill sold out to Hall at the same prices Moore got them of me. M—— first told Hall they were 25 per cent. discount. Hall asked me; I told him the truth; then the discount was 30 per cent. agreed upon by them.

(*Answer of Thos. B. J. Hill.*)

Thomas B. J. Hill, of the county of Bastrop, in the State of Texas, aged 40 years, was produced, and by me sworn on the Holy Evangelists of Almighty God, and examined on the part and behalf of the complainants.

He deposes and says as follows:—

1. In answer to the first interrogatory to him propounded to him he says that he is not acquainted with the complainants, or either of them, but is acquainted with the defendants.

2. In answer to the second interrogatory to him propounded he says that he does know of a sale of a stock of goods from the defendant Nicholson to the defendant Moore in the summer of the year 1851. The amount and quantity of said stock of goods so sold he does not know, but it was all the goods that was remaining on hand by Nicholson at the time of said sale. At the time of said sale the goods were all in the storehouse which had been previously occupied by said Nicholson in the town of Bastrop, in said county of Bastrop. The defendants Moore and Nicholson and himself resided at the time of said sale in the town and county of Bastrop, Texas.

3. In answer to the third interrogatory to him propounded, he says. That he knew nothing of said Nicholson's pecuniary circumstances previous to said sale. It was generally rumored in the community where said Nicholson then lived, that he was broke or unable to pay his debts previous to said sale. He says he does not know what knowledge or means of knowledge or information the said Moore had of the pecuniary condition of Nicholson. He says he never heard Nicholson state in the presence of said Moore or any one else the condition of his pecuniary affairs, his ability to pay his debts, the cause of his selling his goods, whether or not he was indebted to complainants, and his intentions as to paying, or any of said matters, or any of like character. He says he never heard the complainants mentioned until long after the said sale, and then he, said Nicholson, said he intended to pay his creditors as far as his means would go. He never had any conversation with said Nicholson about his pecuniary affairs.

4. In answer to the fourth interrogatory to him propounded, he says. That, subsequent to said sale, said Moore and himself frequently talked of Nicholson's pecuniary affairs, when Moore informed him, Nicholson had made an assignment for the benefit of his creditors of all of his property. He does not now recollect the precise times of such conversations; they were frequent, but none previous to or about the time of said sale. What he said to Moore at the time of those conversations with Moore, he does not now recollect—not expecting then to ever be called on to repeat what was then said. The motives of said Nicholson, or his objects, were not talked of by Moore and himself, nor were they known by him (witness), except

from the statements of Nicholson made to him (witness)—which was that he, Nicholson, wanted to gain time to make arrangements with his creditors. As to the amount of his (Nicholson's) indebtedness and to whom, he does not know.

5th. In answer to the fifth interrogatory to him propounded, he says. That he never heard said Moore make any statement relative to the solvency, insolvency, or indebtedness, failing circumstances, or pecuniary condition of said Nicohlson, either before, at the time, or subsequent to said sale.

It was notorious to every one in the community that Nicholson was broke, and his condition was frequently spoken of by all, and said Moore with the others; and further he saith not.

THOS. B. J. HILL.

And cross-interrogatories having been propounded to the said Thomas B. J. Hill by the defendants—

1st. In answer to the first cross-interrogatory to him propounded, he says. That Nicholson frequently said, all he wanted was time; that he thought he would be able to pay all he owed.

2d. In answer to the second cross-interrogatory to him propounded, he says. That he frequently examined the stock of goods so sold by Nicholson to Moore, and they were in a very bad condition. He does not know certainly of his own knowledge, but it was generally rumored in the community, that Nicholson had bought the said goods on a credit in the summer of 1850, in the city of New York; also, that he, Nicholson, had paid, or agreed to pay, more for said goods in New York, than they could be sold for in Bastrop.

He knows, by a subsequent connection he formed with said Moore as a partner in buying and selling goods, that he (Moore) was not able to make the said goods so purchased from Nicholson pay him (Moore) what he gave for them—which he thinks a sufficient reason for concluding that Nicholson paid more, or promised to pay more, than they were worth in New York.

3d. In answer to the third cross-interrogatory to him propounded, he says. That he became a partner of defendant, Moore, soon after said Moore had made the purchase from Nicholson of the stock of goods aforesaid. He found an invoice of said goods on hand at 20 per cent. below New York cost, and Moore charged the goods to the firm of Moore and Hill at the same price he bought them from Nicholson.

Moore and himself made but a poor business in selling the stock, and had to submit to a severe loss. They sold a large part of said stock to Mr. C. K. Hall, merchant, in Bastrop, at wholesale, without profit, submitting to the loss of twelve months' interest, and thought they were very fortunate in getting out at that. The remnants that were left on hand remained without sale, until, out of patience with the affair, Moore and himself divided them out among their negroes.

Calculating all time, expense, risk, etc., he thinks they, the firm, got out with a profit of twenty per cent. loss.

The firm of Moore & Hill purchased a small lot of goods on a credit from some wholesale merchants in Houston, whilst they were doing business, but with small advantage; it was upon these the firm made all the profit that was made by the concern.

4. In answer to the fourth cross-interrogatory to him propounded, he says: That a large portion of the notes given by Moore to Nicholson for the said stock of goods, were transferred by Nicholson to Robert A. Rutherford, as assignee for the benefit of his (Nicholson's) creditors, and they were paid by Moore to said Rutherford. The other portion of the notes executed by said Moore to said Nicholson for said goods, were transferred by said Nicholson to those persons of whom he (Nicholson) had bought cotton, to be shipped to New York, to his (Nicholson's) creditors.

Moore paid the notes he executed as aforesaid, to those persons who held the notes, as they fell due.

Also, one or more of said notes executed by said Moore to Nicholson for said goods, was transferred to T. W. House, merchant, of Houston, Texas, which was also paid by Moore when due.

He further says, he knows of nothing more of benefit either to the complainants or defendants, to the best of his recollection and belief, and further saith not. THOS. B. J. HILL.

And I, James A. Poage, the commissioner aforesaid, do certify that I reduced the above foregoing deposition to writing, in the presence of the witness, and read the same to him. Whereupon he subscribed his name thereto as above written.

JAMES A. POAGE, Commissioner.

(*Answer of William Dunbar.*)

William Dunbar, of the county of Bastrop, in the State of Texas, aged 35 years, was produced and by me sworn on the Holy Evangelists of Almighty God, and examined on the part and behalf of the complainants. He deposes and says as follows: 1. In answer to the first interrogatory to him propounded, he says: That he is not acquainted with the complainants, but he is acquainted with the defendants.

2. In answer to the second interrogatory to him propounded, he says: He understood that Nicholson did sell out his stock of goods to defendant Moore, in the summer of the year 1851. He don't know the amount of goods sold. The defendants and himself all resided in the town of Bastrop, and county of Bastrop.

3. In answer to third interrogatory to him propounded, he says: That so far as he knows the general reputation of defendant Nicholson in the community where he (Nicholson) lived was that he was solvent previous to said sale, or his stopping business. After the said sale Nicholson was generally considered insolvent.

4. In answer to the fourth interrogatory to him propounded, he says: That he never had any conversation with defendant Moore, previous to or at the time of said sale, in regard to the sale or assignment of the said stock of goods. But he had a conversation with defendant Moore, a short time before said Moore took possession of the store-house in which was the said stock of goods, at which time Nicholson and his wife was present. Defendant Moore said that he (Moore) was taking conveyances from Nicholson and wife of certain real estate and lots of land in Bastrop, in consideration of a debt or debts Nicholson was owing him (Moore); which amount of debts he (witness) understood from both Nicholson and Moore to be about eleven hundred dollars, or near that, a part of which was for property sold by Moore to Nicholson some time previous, and a part of which was for money loaned by Moore to Nicholson some time previous. And both Moore and Nicholson requested him (witness) to take notice that the conveyance was made for the purpose of transferring to Moore sufficient property to cover said indebtedness. This conversation took place when he (witness), as an officer, was taking the acknowledgment of Nicholson and his wife to the execution of the deeds of conveyance. This conversation above stated was the only and all conversation and remarks he ever heard Moore say on the subject, either with himself or any other person, in regard to said sale or assignment. Except some time after the sale of the said stock of goods by Nicholson to Moore, and some time after Moore took possession of said goods, witness heard Moore remark that Nicholson was broke or busted up, or some such words, and this is all he ever heard say.

5. In answer to the fifth interrogatory to him propounded, he says: That he is acquainted with the handwriting of defendant Nicholson, and on examination of the letter or writing attached to the answers of Warren Larkins, he (witness) believes the said letter and writings are in the handwriting of the defendant Nicholson, and further saith not WILLIAM DUNBAR.

And I, James A. Poage, the commissioner aforesaid, do certify that I reduced the above foregoing deposition to writing in the presence of the witness, William Dunbar, and read the same to him, whereupon he subscribed his name thereto as above written.

JAMES A. POAGE, Commissioner.

(*Deposition of Geo. W. Jones.*)

George W. Jones, of the county of Bastrop, and State of Texas, aged 25 years, was produced, and by me sworn on the Holy Evangelists of Almighty God, and examined on the part and behalf of the complainants, he deposes and says as follows:—

1. In answer to the first interrogatory to him propounded, he says: That he is not acquainted with the complainants, but is acquainted with all the defendants.

2. In answer to the second interrogatory to him propounded, he says: That he does know of a sale of stock of goods made by defendant Nicholson to the defendant Moore, some time in the summer of the year 1851. He says he does not know the amount or quantity of goods sold. The defendants and himself resided in the town and county of Bastrop, Texas, at that time.

3. In answer to the third interrogatory to him propounded, he says: That so far as he recollects, within a very short time previous to said sale, Nicholson was generally supposed to be solvent. Though there might have been many persons in the community who supposed he would break. For some several weeks previous to said sale, the pecuniary affairs of said Nicholson, he understood, were embarrassed; since said sale Nicholson has generally been considered insolvent.

4. In answer to the fourth interrogatory to him propounded, he says: That the first conversation he recollects to have had with defendant Moore, in relation to the sale or assignment by said Nicholson of his goods, took place while an invoice of the goods was being taken; he (witness) having a claim or debt against Nicholson, called at the storehouse where the goods were kept, to see Nicholson, when a conversation took place between defendant Moore and himself. It having been some time since said conversation took place, the substance of it, as well as he (witness) recollects, was in relation to his (witness') debt, and Nicholson's object in making sale of his goods and an assignment of his notes, accounts, &c., which at that time was in contemplation. In this conversation he was assured by Moore that Nicholson intended to secure all his home creditors, and that his (witness') claim would be secured, so that he (witness) need apprehend no danger. That they all (Moore, Nicholson and the clerks) were busily engaged in completing the invoice as soon as possible, lest the United States marshal might disconcert the arrangement.

He, witness, does not recollect whether other claims were mentioned in this conversation, but thinks probably a claim in favor of Wm. D. C. Jones was. In a few days afterwards he, witness, sold his claim or debt against Nicholson, to Moore, but at the same time was assured by Moore that his debt would be ultimately paid.

He does not recollect the conversation that occurred at the time he let Moore have his debt (if any), but thinks it was in substance about the same as that of the former conversation.

He does not recollect of ever having any other or further talk or conversation with Moore on the subject. Neither has he ever heard any conversation between said Moore or any other person or persons on the subject asked. Nor has he ever heard Moore make any statements about the subject matter except those he has already above stated.

5. In answer to the fifth interrogatory to him propounded, he says: That he has some acquaintance with the handwriting of James Nicholson, and believes the letters and writing attached to the an-

swers of Warren Larkins are in the handwriting of and signed by said Nicholson. He has seen Nicholson's handwriting before; further deponent saith not. G. W. JONES.

And I, James A. Poage, the commissioner aforesaid, do certify that I reduced the above depositions to writing in the presence of the witness, Geo. W. Jones, and read the same to him, whereupon he subscribed his name thereto as above written.

JAMES A. POAGE, Commissioner.

(*Deposition of C. C. McGinnis.*)

C. C. McGinnis, of the county of Bastrop, in the State of Texas, aged 27 years, was produced, and by me sworn on the Holy Evangelists of Almighty God, and examined on the part and behalf of the complainants, he deposes and says as follows:—

In answer to the first interrogatory to him propounded, he says: That he is only acquainted with the defendants, but not with the complainants.

2d. In answer to the second interrogatory to him propounded, he says: That all he can state concerning the sale of a stock of goods by defendant Nicholson to the defendant Moore, the information came to him as an attorney, and therefore he don't feel authorized to make any statement in the premises.

3. In answer to the third interrogatory to him propounded, he says: That as to Nicholson's reputation, he was considered generally, so far as his (witness') knowledge goes, to be insolvent after the sale of his goods. Before that time he knew but little about him, or any one else in Bastrop, for he had been there but a short time, and had but little acquaintance.

4. In answer to the fourth interrogatory to him propounded, he says: That as to the most of this interrogatory he can make no statement or answer, for the reason given in answer to the first interrogatory, though he heard defendant Moore say to some one, he does not recollect who, though he believes it was Mr. William Dunbar, that he (Moore) saw that Nicholson would fail, and that it stood him in hand to save himself (Moore). This was in the summer of the year 1851, in the town of Bastrop.

5. In answer to the fifth interrogatory to him propounded, he says: That he thinks the signature to said letter purporting to be written by James Nicholson to F. W. Chandler, Esq., Austin, dated "Bastrop, July 18th, 1853," is the signature of James Nicholson, and further he saith not. C. C. McGINNIS.

And in answer to the cross-interrogatories propounded to C. C. McGinnis, he says:—

To the first cross-interrogatory he says: That he has answered this interrogatory fully in answer to the direct interrogatories.

2. To the second cross-interrogatory he says: That he does claim

the privilege of an attorney, and as far as that is concerned he refuses to disclose anything that came to him as an attorney.

3. In answer to the third cross-interrogatory to him propounded, he says: That he does not know whether Nicholson ever offered the stock of goods for sale before that time (except to customers) or not, nor neither does he know at what price he (Nicholson) sold the goods to customers.

4. In answer to the fourth interrogatory to him propounded, he says: That he supposed Moore retailed goods after his purchase from Nicholson some nine or ten months, and then sold out to C. K. Hall, of Bastrop, what he had on hand: and further says he knows nothing more to benefit either party. And further he saith not.

C. C. McGINNIS.

And I, James A. Poage, the commissioner aforesaid, do hereby certify that I reduced the above foregoing depositions to writing in the presence of the witness, C. C. McGinnis, and read the same to him, whereupon he subscribed his name thereto as above written.

JAMES A. POAGE, Commissioner.

(*Deposition of R. A. Rutherford.*)

Robert A. Rutherford, of the county of Bastrop, in the State of Texas, aged years, was produced, and by me sworn on the Holy Evangelists of Almighty, and examined on the part and behalf of the complainants, he deposes and says as follows:—

1. In answer to the first interrogatory to him propounded, he says: That he is not acquainted with the complainants, but he is acquainted with all the defendants.

2. In answer to the second interrogatory to him propounded, he says: That he knows that defendant Nicholson made a sale of his stock of goods to defendant Moore in the summer of the year 1851. He don't know the amount of goods sold. The defendants and myself all reside in the town and county of Bastrop.

3. In answer to the third interrogatory to him propounded, he says: He did not know much about the solvency or insolvency of Nicholson previous to said sale, nor did he know anything about his pecuniary situation previous to said sale; but immediately after the said sale there was a general rush upon said Nicholson by all whom he owed to save their debts, or get something for their debts, under the impression that he (Nicholson) could not be able to pay them, and they lose their debts; and since the said sale Nicholson has been reputed to be insolvent.

4. In answer to the fourth interrogatory to him propounded, he says: That he recollects that he had one or more conversations with Moore, previous to the said sale, in regard to Nicholson giving him (witness) an assignment of all his stock of goods and effects for the benefit of his creditors, but what the substance of those conversations were, particularly, he does not now recollect, and he does not now

recollect what he said to Moore on the subject, and do not recollect what Moore said (if he said anything) as to the objects or motives of Nicholson in selling or assigning his goods, or as to the pecuniary condition or indebtedness of Nicholson, and to whom and what sums. He never, at any time, talked or conversed with Nicholson about selling or assigning his goods or effects, and no authority was given him to make any statements on the subject. He don't recollect of ever hearing any conversation between Moore and any other person or persons previous to or after said sale on the subject of the sale or assignment by *by* Nicholson of his goods, or the solvency or insolvency of Nicholson, or the situation of his, Nicholson's, affairs, or one of a like nature, nor any statements made by Moore to any person at any time on that subject or one of the like nature, except this: after the purchase by Moore of Nicholson of the goods, and whilst Moore was occupying the store-house and selling the same goods, he, witness, heard a conversation between one T. W. House, Esq., of Houston, Texas, and said Moore, on the subject of Nicholson's failing, which conversation was begun by said House with Moore, in which said House told Moore "that he (House) knew of the embarrassed circumstances of Nicholson some time before he (Nicholson) went on to New York and purchased his last stock of goods and brought them to Bastrop." He (House) stating to Moore "that Nicholson was largely indebted to him (House), and that it was through his (House's) influence and recommendation that Nicholson got the goods in New York and Philadelphia. That soon after Nicholson's return with the said last stock of goods to Bastrop, he (House) made a push at him (Nicholson) and saved his debt to an amount of near ten thousand dollars. That he (House) knew that was the only way he (House) had of getting his debt from Nicholson." During this conversation between House and Moore, he (witness) recollects nothing Moore said on the subject of Nicholson's motives or intentions, solvency or insolvency.

5. In answer to the fifth interrogatory to him propounded, he says: He is acquainted with the handwriting of Nicholson. He examined the letter and writing attached to the answer of Warren Larkins, and believes them to be in the handwriting of Nicholson. He has Nicholson's handwriting and signature frequently.

6. In answer to the sixth interrogatory to him propounded, he says: That Nicholson did make an assignment to him of all his notes, accounts, books, bonds, &c., about the seventh of July, 1851. The aggregate amount of all notes, accounts, &c., assigned was about twelve or fourteen thousand dollars, to the best of his recollection.

The amount of Nicholson's indebtedness, to the best of his recollection, that came to his knowledge after the assignment, was about twenty thousand dollars and upwards.

The amount that has been realized out of the assets so assigned will not exceed six thousand dollars, and the utmost that can be realized out of all of said assets assigned will be very little more (he

thinks) than six thousand dollars, for the reason they are generally bad debts, and the debtors insolvent persons. Many of the debts are in judgment, and executions returned thereon unsatisfied.

The assignment was made thus: Nicholson divided his creditors into three classes; the first class named and referred to in the deed of assignment was what he called his "home creditors," or those in Texas. The second was some three firms of foreign creditors of New York and Philadelphia. The third was creditors generally, in which class the complainants in this cause were included.

The proceeds of the collected assets out of the said funds, notes, accounts, &c., have been applied by me to the payment of the debts included in the deed of assignment.

R. A. RUTHERFORD.

And cross-interrogatories having been propounded to the said Robert A. Rutherford by the said defendants—

1. In answer to the first cross-interrogatory propounded to him, he says: That he does recollect of having conversations with defendant, Moore, on the subject matter referred to, but he does not recollect what was said, and all he recollects of ever hearing Moore say to any other person is as stated in his answer to the 4th direct interrogatory.

2. In answer to the second cross-interrogatory propounded to him, he says: That he does not know anything about the goods referred to.

He further says he knows nothing more on the subject matter.

R. A. RUTHERFORD.

And I, James A. Poage, the commissioner aforesaid, do hereby certify that I reduced the above foregoing deposition to writing in the presence of the witness, R. A. Rutherford, and read the same to him. Whereupon he subscribed his name thereto as above written.

JAMES A. POAGE, Commissioner.

(*Deposition of Saml. Porter.*)

Samuel Porter, of the county of Bastrop, in the State of Texas, aged 34 years, was produced and by me sworn on the Holy Evangelist of Almighty God, and examined on the part and behalf of the complainants. He deposes and says, as follows:—

1. In answer to the first interrogatory to him propounded, he says that he is not acquainted with the complainants, or either of them, but is acquainted with the defendants.

2. In answer to the second interrogatory to him propounded, he says that he does know that in the summer of the year 1851, the defendant Nicholson, sold to the defendant Moore, a stock of goods, he don't recollect the amount or quantity of goods so sold, but it was nearly the whole of the remaining stock of goods, which said Nicholson had on hand at the time of said sale. There was a small quan-

tity of the goods which Nicholson then had taken by the agent of T. W. House, Esq., a merchant of Houston, in Texas. To the best of his recollection, the goods were purchased by said Moore from said Nicholson, at twenty per cent. below the original costs in New York. Moore and Nicholson both resided at the time of said sale, in the town and county of Bastrop, Texas, and that he was in the employ of said Nicholson, and keeping the store of goods as a salesman and clerk for said Nicholson, at the time of said sale of said stock of goods by Nicholson to Moore.

3. In answer to the third interrogatory to him propounded, he says that the pecuniary condition of Nicholson at the time of said sale of his stock of goods, was that he was in failing circumstances, and hard pushed. He does not know what knowledge or means of knowledge or information said Moore had of the pecuniary condition of Nicholson's pecuniary affairs. He does not recollect of hearing Nicholson state in the presence of said Moore, before or at the time of said sale, or about that time, the condition of his pecuniary affairs, or his ability to pay his debts, or the cause of his selling his goods, whether he was indebted to the complainants and his intentions as to paying, or any other matters of a like character.

The time that has elapsed since the transaction has almost entirely erased from his mind or memory all the conversations and remarks that took place at the time between Moore and Nicholson, or between either of them and any other person on the subject of the sale of said goods, or Nicholson's circumstances, or situation.

4. In answer to the fourth interrogatory to him propounded, he says that the contract or sale of the said stock of goods was concluded and closed one evening about eight or nine o'clock P. M., by the parties signing the appropriate necessary papers, after talking about it and trying to make the trade for a day or two previous. When, on the succeeding morning, himself and two or three men, together with said Moore and Nicholson, began to take an invoice of the stock of goods purchased by said Moore from Nicholson, and continued from day to day until they finished. A greater portion of the time they were taking the invoice, the doors were closed, but the windows were kept open; sometimes during the day the doors of the house (store) would be opened. The doors of the house were kept closed, so that they would not be molested by the people in taking the invoice. An invoice was taken and completed of the said stock of goods at the time of the delivery as above stated. The invoice was made out principally in the daytime, they also worked in the evening to the usual late hour when marking and putting up new goods.

Several persons assisted in taking the invoice. Mr. Wilson Kennedy, Mr. S. C. Nolan, Mr. Jas. A. Campbell, and himself, with said Moore and Nicholson; and they were generally all present, with some exceptions, during the whole time.

5. In answer to the fifth interrogatory to him propounded, he says

that Nicholson was, to the best of his knowledge, in failing circumstances at the time he made said sale of his goods to Moore. He believes that Moore had a knowledge of Nicholson being in failing circumstances at the time of said sale. He does not recollect of ever hearing Nicholson say, before or at the time of said sale of the said stock of goods, in the presence of Moore, anything about his being unable to pay his debts, or the cause of his selling his entire stock of goods; neither does he now positively recollect what he may have heard Moore say, before the said sale, or six months thereafter, relative to his (Moore's) knowledge of Nicholson being in failing circumstances, or involved in debt at the date of his (Moore's) purchase of said goods from Nicholson. Neither does he now recollect of hearing Nicholson say to Moore, or in his presence, either before the sale, during the progress of the same, or during the time of taking an invoice of the goods sold, relative to his (Nicholson's) being indebted to the complainants, and as to his intentions of paying the same. He never heard Nicholson say in the presence of, or to said Moore, anything about selling his property to prevent complainants from making it liable for their debts.

The goods were delivered by Nicholson to Moore, as he has already above stated. It was generally in the daytime, and the persons present as above stated. The goods were delivered in the town and county of Bastrop, in the State of Texas.

6. In answer to the sixth interrogatory to him propounded, he says. That there was a good deal of conversation and talk by and between many persons at, or about the time of the sale of said goods and of taking an invoice thereof about and in relation to Nicholson's insolvency and pecuniary condition, but he does not recollect of making any statement to said Moore, or hear any other person make any statement to said Moore about or in relation to Nicholson's pecuniary situation, his indebtedness to the complainants, or any other person.

7. In answer to the seventh interrogatory to him propounded, he says. That he did not have any conversation with said Moore to the best of his recollection, at or about the time of said sale in regard to Nicholson's indebtedness to the complainants; said Moore did speak to him just before he (Moore) concluded the purchase of the goods, and when he had it in contemplation to purchase the same, about remaining in the store as a clerk and salesman for him, Moore, and stated that he wished him (witness) to remain; and after the sale and purchase of the goods, he was employed by said Moore as a clerk and salesman in his store, having been previously discharged by Nicholson at his, witness' request. He further states that he knows of no other matter or thing in relation to this suit but what he has answered. SAM'L PORTER.

And cross-interrogatories having been propounded by the defendants to the said Samuel Porter—

1. In answer to the first cross-interrogatory to him propounded,

he says. That he does recollect that at or about the time an invoice of the said stock of goods was taking, Warren Larkens, as agent of T. W. House, Esq., of Houston, Texas, purchased or took out a portion of the said stock of goods of Nicholson to secure a debt due from Nicholson to said T. W. House, but what amount or quantity of goods was taken by said Larkins, he does not know.

2. In answer to the second cross-interrogatory to him propounded, he says. That he does know that the defendant Nicholson was indebted to the defendant Moore at the time of the sale and purchase of said stock of goods, but he does not know in what amount. Defendant Moore informed him that said indebtedness was a part of the consideration of the purchase of said goods by him (Moore) from Nicholson, and that it was on account of said indebtedness that he, Moore, purchased said goods from Nicholson.

At the time of the sale he does not know that said Moore did know who the creditors of Nicholson were, or the amount owing to each, or had any personal acquaintance with Nicholson's creditors or complainants.

3. In answer to the third cross-interrogatory to him propounded, he says. That he had been the clerk of said Nicholson in his store for five or six months previous to the sale to said Moore of the goods. That many of the stock of goods were old and unsalable; a large portion of the goods looked like they had been on hand a long time, and would not sell at a profit. Some of the goods, to his knowledge, after Moore bought them, were sold at ten per cent. below cost.

4. In answer to the fourth cross-interrogatory to him propounded, he says. That he did aid in making and taking an inventory of the said goods sold by Nicholson to Moore. The said goods were, to the best of his recollection, invoiced at New York costs, with 10 per cent. added for the purpose of covering expense of transportation and carriage. After invoicing the goods at the marked costs, there was then deducted 10 per cent. from the whole amount, which was done on a fair invoice. He says that, considering everything, Moore paid Nicholson a full and fair price for said stock of goods. There were many of the said goods which were salable without any fresh addition. Then there was a large portion of them which wanted and required new supplies and additions to make a variety in order to make the balance salable in a usual town market. Moore, he thinks, could of paid all necessary expenses on said goods, and made something so as to cover the costs at least; but he does not believe the profits would of been so good and certain as if the goods had of been fresh in market.

5. In answer to the fifth cross-interrogatory propounded to him he says. That he remained with Moore after he purchased the goods from Nicholson as clerk and salesman, and said Moore, or rather Moore & Hill, purchased some new fresh goods during the time, which was mixed with the old stock purchased by Moore from Nichol-

son; and those new goods which were purchased by Moore and Hill did add to the facility of the sale of the old stock of goods so purchased from Nicholson.

He says he did not make up the invoice of the goods which Moore & Hill finally sold to Mr. C. K. Hall; that was made out, he believes, by Mr. J. A. Campbell.

His understanding was, that Moore and Hill let C. K. Hall have all the goods which was purchased from Nicholson by Moore at the same price he, Moore, gave Nicholson for the stock of goods. Mr. C. K. Hall got all the goods left on hand from Moore and Hill, except a few goods which Moore and Hill subsequently gave away to their own slaves.

6. In answer to the sixth cross-interrogatory to him propounded he says. That said Nicholson New York invoice prices of his goods, particularly those of Henry Sheldon & Co., were charged usually very high.

7. In answer to the seventh cross-interrogatory to him propounded he says. That Moore was a man of good fortune, and might of easily obtained a credit in the wholesale market for goods, and could of purchased a stock of goods which he could of sold at a better profit than those he purchased from said Nicholson.

He does not think he could of taken the stock of goods purchased by Moore from Nicholson, and sold them for a profit at cash, on the New York cost and carriage, and paid expenses, or made a living profit thereby, for the reason the goods were in rather a damaged condition, and some of them really not salable at all.

And further he saith not. SAM'L PORTER.

And I, James A. Poage, the commissioner aforesaid, do hereby certify that I reduced the above foregoing deposition to writing in the presence of the witness Samuel Porter, and read the same to him, whereupon he subscribed his name thereto as above written.

JAMES A. POAGE, Commissioner.

(*Deposition of Wm. T. Gamble.*)

William T. Gamble, of the county of Bastrop, and State of Texas, aged 52 years, was produced, and by me sworn on the Holy Evangelists of Almighty God, and examined on the part and behalf of the complainants. He deposes and says as follows:—

1. In answer to the first interrogatory to him propounded, he says: That he is acquainted with the defendants, and has no personal acquaintance with any of the plaintiffs.

2. In answer to the second interrogatory to him propounded, he says: That he knows nothing of his own personal knowledge excepting that he saw, in possession of the defendant Moore, a portion of the stock of goods, and information from Nicholson and general rumor, which had belonged to Nicholson; he has no knowledge of

the amount. All of said defendants was residing in the town and county of Bastrop, Texas, in the year 1851.

3. In answer to the third interrogatory to him propounded, he says: That as far as his knowledge extends, James Nicholson, in the spring and summer of the year 1851, was considered as being embarrassed in his pecuniary affairs, and since that time he has been considered as insolvent.

4. In answer to the fourth interrogatory to him propounded, he says: That he was then living in Webber's Prairie, Travis County, Texas. His occupation was in selling goods. As to the inquiry where he purchased goods in 1850 and 1851, he declines answering (not recognizing the right to inquire into his private affairs). He has some knowledge of the original cost of the goods he saw in the possession of Moore, having previously examined the stock when in possession of Nicholson. The goods he did not consider worth New York cost; as evidence of that fact he made an effort to select from the stock when in said Nicholson's possession, goods to the amount of one thousand dollars, but did not get exceeding the amount of between six and seven hundred dollars, which was all that he was willing to take at original costs, conditioned that they were not to be paid for until he sold them. He would estimate the costs and charges of transportation, &c., at about 8 per cent. on the original costs.

5. In answer to the fifth interrogatory to him propounded, he says: That previous to the time that the sale was said to have been made by Nicholson to Moore he had but little acquaintance with Moore, and have no knowledge of ever hearing him speak of Nicholson previous to the purchase, or until about the commencement of this suit.

6. In answer to the sixth interrogatory to him propounded, he says: That he did not.

7. In answer to the seventh interrogatory to him propounded, he says: That he did not.

8. In answer to the eighth interrogatory to him propounded, he says: That he again repeats that he never had any conversation with Moore about his purchase from Nicholson until about the commencement of this suit, and he has no personal knowledge of the terms and conditions of the sale.

9. In answer to the ninth interrogatory to him propounded, he says: That he is acquainted with the handwriting of James Nicholson, and the letters or writings shown him as attached to the answers of Warren Larkens, he is satisfied is in the handwriting of James Nicholson.

10. In answer to the tenth interrogatory to him propounded, he says: That some time after the sale he remarked to Nicholson that he (Nicholson) had made if he (witness) had been correctly informed as to the terms, a very imprudent sale, that he (Nicholson) could have turned the goods over to his creditors for costs and charges;

he (Nicholson) then replied to him (witness) that if Moore and Hill realized a good profit on the goods, he, Nicholson, was to have a portion; he, witness, believes he, Nicholson, said one-third. This conversation was in Bastrop, and he has no recollection of any person being present. WM. T. GAMBLE.

And cross-interrogatories having been propounded to the witness, William T. Gamble, by the defendants—

1. In answer to the first cross-interrogatory to him propounded, he says: That a short time previous to the transfer of the goods to Moore by Nicholson he examined the stock. Was offered such portions as he might select at New York costs. The goods was to be received by T. W. House, Esq., of Houston, in payment of a debt due him from Nicholson. He (witness) first agreed to take to the amount of one thousand dollars, but after making selections to an amount between six and seven hundred dollars he declined taking any more, and was unwilling to take the amount selected, only upon the condition that he was not to pay House for the goods until he sold them. His reason for not taking more, was, that he considered the goods high, the stock or assortment badly broken, and many of the goods badly damaged or defaced from rough handling; a portion of the goods had been on hand some time, but the larger portion was fresh goods. The original invoices was not shown him. He depended on the word of Nicholson for the cost.

2. In answer to cross-interrogatory second propounded to him, he says: That as before stated the assortment was badly broken; he did not consider a man could compete with the other stocks in Bastrop, without replenishing the stock, with any profit.

3. In answer to cross-interrogatory third to him propounded, he says: That he again repeats that he did not have any conversation with Moore on the subject.

4. In answer to cross-interrogatory fourth to him propounded, he says: That he knew a portion of the goods remained in Moore's hands some time; he was not often in Bastrop about that time, and knows nothing of his own knowledge how he (Moore) disposed of them.

5. And to the fifth cross-interrogatory to him propounded, he says: That he has answered fully as far as he recollects.

WM. T. GAMBLE.

And I, James A. Poage, the commissioner aforesaid, do hereby certify that I reduced the above foregoing deposition to writing in presence of the witness Wm. T. Gamble, and read the same to him, whereupon he subscribed his name thereto as above written.

JAMES A. POAGE, Commissioner.

(*Deposition of Jacob C. Higgins.*)

Jacob C. Higgins, of the county of Bastrop, in the State of Texas,

aged 40 years, was produced and by me sworn on the Holy Evangelist of Almighty God, and examined on the part and behalf of the complainants, he deposes and says as follows:—

1. In answer to the first interrogatory to him propounded, he says: That he is acquainted with two of the complainants, Henry Sheldon and Nelson Clements, and acquainted with all the defendants.

2. In answer to the second interrogatory to him propounded, he says: That he does know of a sale of a stock of goods from the defendant Nicholson to the defendant Moore, in the summer of the year 1851; the amount and quantity of said stock of goods he does not know. The defendants resided in the town of Bastrop, and he resided in the county of Bastrop, Texas, about seven miles from the town.

3. In answer to the third interrogatory to him propounded, he says. That the reputation of defendant Nicholson generally in the community for six months, or thereabouts, previous to the sale, and has been since that time that of a bankrupt.

4. In answer to the fourth interrogatory to him propounded, he says. That he never did carry any communication or communications either written or verbal from either of the defendants to the other, at any time, either previous to or about the time of said sale, in relation to the sale of said stock of goods or property or to either.

5. In answer to the fifth interrogatory to him propounded, he says. That he never had any conversation with the defendant Moore, previous to said sale, in regard to the pecuniary condition, solvency or insolvency, indebtedness or failing circumstances of said Nicholson. That he (witness) had a conversation with said Moore some four or five months subsequent to said sale, and that conversation was concerning an account he (witness) had made with Moore, and which Nicholson had agreed to settle for him (witness). Said Moore then, in that conversation, told him (witness) that he, Moore, did not owe said Nicholson anything, and that he (witness) would have to pay to him (Moore) the said account; but the amount of said account was subsequently arranged through Nicholson. No other conversation took place between him (Moore) and him (witness) in relation to the pecuniary condition, solvency, or insolvency of said Nicholson subsequent to said sale.

6. In answer to the sixth interrogatory to him propounded, he says. That he never heard the defendant, Moore, make any statement in relation to the subject matter referred to in this interrogatory at any time.

7. In answer to the seventh interrogatory to him propounded, he says. That he never did make any statement or hear any one else make any statement in the presence of Moore or any one else at any time, in relation to the subject matter referred to in this interrogatory.

8. In answer to the eighth interrogatory to him propounded, he

says. That he never did give any information, or hear any one else give any information, to the said Moore in relation to the subject matter referred to in this interrogatory. Nor did he (witness) ever make any statement in the presence of Moore relative to the indebtedness of said Nicholson to complainants.

9. In answer to the ninth interrogatory to him propounded, he says. That he never did hear said Moore make any statement as to the reason of said Nicholson's selling his stock of goods and other property. J. C. HIGGINS.

And cross-interrogatories having been propounded to the said Jacob C. Higgins by the defendants :—

1. In answer to the first cross-interrogatory to him propounded, he says. That he never had any conversation with the defendant, Moore, in relation to the subject matter referred to in this cross-interrogatory.

2. In answer to the second cross-interrogatory to him propounded, he says. That Nicholson did propose to sell to him the same stock of goods, he (Nicholson) sold to Moore at original costs ; but he (witness) did not nor would not purchase them, first, because he did not wish to engage in the mercantile business ; second, because he did not think, that anything could be made on the goods from the examination he made. The condition of the goods were bad, having been badly handled—Nicholson's house, when they were opened, being too small for such a stock ; they were also very much culled. What they were worth, he is not sufficiently versed in the mercantile business to be a judge.

In answer further, he says he knows nothing more that will benefit either of the parties to this suit.

And further he saith not. J. C. HIGGINS.

And I, James A. Poage, the commissioner aforesaid, do hereby certify that I reduced the above foregoing deposition to writing, in the presence of the witness, Jacob C. Higgins, and read the same to him, whereupon he subscribed his name thereto as above written.

JAMES A. POAGE, Commissioner.

In faith of all which, I hereby return the interrogatories, depositions, commission and agreement of the solicitors, and papers in the testimony referred to the said honorable court.

JAMES A. POAGE, Commissioner.

(*Deposition of Robert H. Hall.*)

Robert H. Hall, of the county of Bastrop and State of Texas, aged thirty-eight years, was produced and by me sworn on the Holy Evangelists of Almighty God, and examined on the part and behalf of the complainants. He deposes and says as follows :—

1. In answer to the first interrogatory to him propounded, he says. That he is acquainted with the defendants, Thomas C. Moore,

James Nicholson, and Rebecca H. Nicholson, but he is not acquainted with the plaintiffs, or either of them.

2. In answer to the second interrogatory to him propounded, he says. That some time in the month of May, A. D. 1852, Preston Conlie called upon him, representing himself as acting for defendant, James Nicholson, and requested him to purchase a note drawn by defendant, Thomas C. Moore, dated some time in June of the previous year, payable to defendant, James Nicholson, on the first of January, A. D. 1853, for five hundred dollars ($500). Previous to purchasing, he (witness) called on defendant Moore, and inquired if the note was good, and would be met at maturity; upon his answering in the affirmative, he (witness) returned and completed the negotiation with said Conlie, paying him three hundred and seventy-five ($375) dollars for the same. At the same time said Conlie presented him (witness) an open letter directed to defendant Moore, and signed by defendant Nicholson, requesting him, said Moore, to execute a new note payable to him, witness. The same day he, witness, met defendant Moore in the street, and presented the letter to him, and he, Moore, signified his willingness to do so, and accordingly executed a new note signed by the firm name of Moore & Hill. After executing said note, he, said Moore, remarked, "I will keep" (or take care of) "this letter," (referring to the aforesaid letter), "for I don't know what might happen." Upon witness asking him what he meant, he replied, "Jimmy is a little rascally, and it is well enough to have it to show" (the said letter). "But," he said in continuation, "somebody would have made something out of the transaction, and I don't know why it should not be me (Moore) as well as anybody else."

This is the substance of said conversation, and, I think, the words. I had no conversation with said Moore in relation to the consideration for which said note was given, nor in relation to the pecuniary condition, indebtedness, solvency or insolvency of said Nicholson, about the time said note was executed, or at any other time.

3. In answer to the third interrogatory to him propounded, he says. That he did not hear Moore say how much he made on the purchase of Nicholson's goods. And to the other questions pertaining to conversations by and with said Moore, he must give a general negative.

4. In answer to the fourth interrogatory to him propounded, he says: That he has heard defendant Nicholson make a statement, on divers occasions and in sundry places, in the town of Bastrop, as to the character of the sale from him to defendant Moore. The conditions of said sale, as stated by said Nicholson, were that the said Moore was to pay said Nicholson a certain per cent. on the New York cost of the goods. Which per cent. he stated to me, but which I do not now recollect. That upon the sale of said goods by defendant Moore, he, defendant Moore, was to pay to him, said Nicholson, a portion of the profits arising from said sale. He, Nicholson, like-

wise stated that the goods were ostensibly sold by him to said Moore at a certain per cent. below the New York costs, when in reality, by a private understanding between said Nicholson and said Moore, they were sold at a greater per cent. below said cost.

He says that he is acquainted with the handwriting of defendant Nicholson, and on examination of the letter or writing marked Exhibit "A," attached to the answers of Warren Larkins, Esq., he believes them to be in the handwriting of defendant James Nicholson.

And further he saith not. R. H. HALL.

And I, James A. Poage, the commissioner aforesaid, do hereby certify that I reduced the above foregoing deposition to writing in the presence of the witness, and read the same to him, whereupon he subscribed his name thereto as above written.

JAMES A. POAGE, Commissioner.

HENRY SHELDON & Co. vs. JAMES NICHOLSON, REBECCA H. NICHOLSON and THOMAS C. MOORE.	District Court of United States for Texas.

The complainants in above cause

To James A. Poage, commissioner,

To taking depositions of ten witnesses, 13,216 words, at 20 cts. per 100 words,	$26.43
" ten certificates, 4*s.* each	5.00
Amount,	$31.43

United States of America.

HENRY SHELDON, NELSON CLEMENTS, and EDWARD A. SHELDON, compl'ts, vs. JAMES NICHOLSON, REBECCA H. NICHOLSON and THOMAS C. MOORE, def'ts.	In District Court of United States for the District of Texas.

(*Deposition of Jas. H. Gillespie.*)

James H. Gillespie, of the county of Bastrop and State of Texas, aged 39 years, was produced and by me sworn on the Holy Evangelists of Almighty God, and examined on the part and behalf of the defendants. He deposes and says as follows:—

1. In answer to the first interrogatory to him propounded, he says: That he was *that he was* merchandising in the town and county of Bastrop at that time, and was a pretty close observer of all the stocks of goods brought to the place, and was frequently in the store-house of Mr. Nicholson, when and where he had ample opportunity of forming a general knowledge of his stock of goods. The goods were purchased by Mr. Nicholson (at least the principal part of his stock) in the fall of the year 1850, and when they were received in

Bastrop they were opened in two or three houses, and, he thought at the time, very badly handled, and must suffer considerable damage. He (Nicholson) afterwards procured a better house, and his goods then were kept in better order.

The stock of goods was very badly assorted, and at the time of sale to Moore were, from being badly handled and exposed to dust, he (witness) considered damaged and unsalable; and if sold would not yield a profit upon invoice prices.

2. In answer to the second interrogatory to him propounded, he says: That some time after Mr. Moore's purchase from Nicholson, he (Moore) proposed a partnership to him (witness), and offered to put in the stock he (Moore) had purchased from Nicholson, which he (witness) declined; he (Moore) proposed to put in the stock of goods so purchased of Nicholson at costs, but he (witness) did not believe any money could be made off the goods.

3. In answer to the third interrogatory to him propounded, he says: That he does not recollect how long precisely said Moore kept said stock, but about ten months he thinks; he (Moore) then sold the remaining stock on hand to C. K. Hall, merchant, of Bastrop; he (Moore) could not have done a profitable business without replenishing and keeping up a better stock, and he (witness) is fully satisfied without which he would have done but very little business, not sufficient to make it profitable. To pay a profit to the merchant retailing, goods, in the way they are usually sold in this part of the country, should be sold at from 33⅓ to 75 per cent. on the kind of goods sold by Nicholson to Moore, and further saith not.

JAMES H. GILLESPIE.

And cross-interrogatories having been propounded to the witness, James H. Gillespie, by the complainants:—

1. In answer to the first cross-interrogatory to him propounded, he says: That it was reported and generally believed that Nicholson was insolvent and would not be able to meet his liabilities, and he (witness) does not know that said Moore had any other knowledge than that of the common report. He does not recollect distinctly to have heard any one in particular, in the presence of said Moore, speak in regard to the condition of said Nicholson, but it was the frequent subject of conversation amongst the citizens. Nicholson afterwards told him (witness) that his object in selling was to pay his debts as far as his assets would go, and he does not now recollect that he spoke specifying in particular any claim. He (Nicholson) said it was his intention, first, to pay his liabilities at home, then those from home. He (witness) does not recollect ever having heard Moore speak of the solvency of the said Nicholson; if he did, he did not now recollect, or of the intentions or motives of the said Nicholson for selling, and further saith not.

JAMES H. GILLESPIE.

And I, James A. Poage, the commissioner aforesaid, do hereby certify that I reduced the above deposition to writing in the presence of the witness, and read the same to him, James H. Gillespie, whereupon he subscribed his name thereto as above written.

JAMES A. POAGE, Commissioner.

(*Deposition of L. C. Cunningham.*)

Leander C. Cunningham, of the county of Bastrop, and State of Texas, aged 44 years, was produced, and by me sworn on the Holy Evangelists of Almighty God, and examined on the part and behalf of the defendants. He deposes and says as follows:—

1. In answer to the first interrogatory to him propounded, he says: That he remembers the stock of goods in question; he considered them a very poor stock; many of them had been on hand several years, and such as had been brought into the store recently were badly selected in his judgment, and the whole stock was handled roughly whilst in the hands of Nicholson; he never examined them very carefully, only saw them frequently in Nicholson's store; he does not know what their invoice value was, and cannot say how much they had depreciated while in the hands of Nicholson; he would make a very great difference between such a stock and that of a new stock entirely purchased to suit the market; he thinks the difference equal to one-half the value at least.

He has been engaged as a merchant here since 1844.

2. In answer to the second interrogatory to him propounded, he says. That he cannot say positively how long Moore kept any of the goods on hand. He does not think that they would have been all sold until now, had they been kept separate from other goods. He does not think that any man could have taken the stock of goods as they were when Moore purchased them, and ever have sold enough out of them to pay the first costs, provided the cost was as much as new goods of the like description usually did cost, without replenishing and adding to the same.

When goods are a very ready sale, a small profit, say 10 per cent. will remunerate, but goods which are very dull sale, will hardly remunerate at any per cent.

And further he saith not. L. C. CUNNINGHAM.

(*Deposition of J. C. Radford.*)

J. C. Radford, of the county of Bastrop, in the State of Texas, aged 47 years, was produced, and by me sworn on the Holy Evangelists on Almighty God, and examined on the part and behalf of the defendants. He deposes and says as follows:—

1. In answer to the first interrogatory to him propounded, he says. That he was but partially acquainted with the stock of goods which defendant Thomas C. Moore purchased of the defendant James Nicholson, in the year 1851. That he sold goods for the

defendant Nicholson in the years 1846, 1848, and 1849, and was in the storehouse of said Nicholson two or three times a week from that time until he sold out to Mr. Moore. He (witness) has sold goods for some ten or twelve years. He took but little notice of the goods in Nicholson's store, after he left the store. To his knowledge, some of the goods had been on hand three or four years. Some of the goods were badly kept, and consequently in a bad condition. He does not think the goods were worth original costs, and cannot say how much less. Mr. Moore was retailing the goods about nine or ten months, then sold out the whole stock to C. K. Hall, Esq., of Bastrop.

He says the probability of competing with other merchants in Bastrop, without replenishing the stock, was not very good, as the stock was much broken. The goods ought to have sold at about 33⅓ per cent. advance on original costs.

He does not know of anything more that would be a benefit to either of the parties.

And further he saith not. J. C. RADFORD.

And I, James A. Poage, the commissioner aforesaid, do hereby certify that I reduced the above depositions of L. C. Cunningham and J. C. Radford to writing, in the presence of the witnesses, L. C. Cunningham and J. C. Radford, and read the same to each one of them. Whereupon they subscribed their names thereto as above written.

JAMES A. POAGE,
Commissioner.

(*Deposition of Wilson Kennedy.*)

Wilson Kennedy, of the county of Bastrop, and State of Texas, aged 41 years, was produced, and by me sworn on the Holy Evangelists of Almighty God, and examined on the part and behalf of the defendants. He deposes and says as follows:—

1. In answer to the first direct interrogatory to him propounded, he says. He knows that defendant Moore did purchase of defendant Nicholson a stock of goods in the summer of the year of 1851, in the town and county of Bastrop, Texas; he does not know what amount of goods Moore bought of Nicholson. An invoice of the goods so purchased was made out and taken by him (witness), Stephen C. Nolan, Esq., Samuel Porter, Esq., and defendants Moore and Nicholson.

We commenced taking and making out the invoice of the said goods directly after the sale, the next day he believes. He does not now recollect the aggregate amount of the goods invoiced. The opportunities he had of knowing the fairness of the transaction was, that he was present for three days, assisting in taking an invoice of the goods on the sale from Nicholson to Moore. The prices of the goods were set down as they were weighed and measured by said parties present, and all the goods of which the weights and measures

were not known from the original marks, was weighed or measured and re-marked, and the prices and quantities thereof placed on the invoice.

He believes from all the circumstances attending the transaction, that the sale of said stock of goods was then fairly and honestly, and he still believes that said sale was fairly and honestly made, and for a valuable consideration paid by Moore to Nicholson.

He was informed by both Nicholson and Moore that Moore was to take the goods at twenty per cent. discount on the New York invoice cost. He believes that the goods were all very high at that price, particularly the woollen goods, for they all had been originally purchased at very high prices, and they were very much injured in the handling and folding, being apparently very roughly put up. He (witness) was offered an interest in the stock of goods by Moore after his purchase, but he (witness) declined purchasing, for the reason he believed that nothing could be made on the goods at the price Moore agreed to pay Nicholson for them, and further he saith not.

WILSON KENNEDY.

And cross-interrogatories having been propounded to the witness, Wilson Kennedy, by the complainants:—

1. In answer to the first cross-interrogatory to him propounded, he says: That he did not know what the pecuniary condition of Nicholson was at the time he sold his stock of goods to Moore. The general opinion in the community was that he was embarrassed and unable to pay his debts previous to the said sale. He don't know what knowledge or means of knowledge or information said Moore had of the pecuniary condition of Nicholson's affairs. He never heard Nicholson or any other person state to or in the presence of Moore what was the pecuniary condition of Nicholson, his solvency or insolvency, either before or after the sale. He never heard Moore say anything at all about the pecuniary condition of Nicholson before, at, or after the sale.

The goods were turned over to Moore at the time of the sale, or as they were invoiced, as stated in his answer to the direct interrogatory, and in the daytime. The invoice was taken in the daytime, and the goods fully turned over after the invoice was made.

He understood from Nicholson that the reason why he sold his goods was that he wished to pay his debts, as far as they would go in payment, and that was his motive and intention as he (witness) learned from Nicholson at that time, and no other.

2. In answer to the second cross-interrogatory, he says: He never heard the defendant Moore say or admit that he (Moore) knew that Nicholson made the sale to him (Moore) with purpose and intention of evading, hindering, prolonging and delaying the recovery of the debt of the complainants or any other person, and further he saith not.

WILSON KENNEDY.

And I, James A. Poage, the commissioner as aforesaid, do hereby certify that I reduced the above deposition to writing in the presence of the witness, Wilson Kennedy, and read the same to him. Whereupon he subscribed his name thereto as above written.

JAMES A. POAGE, Commissioner.

In faith of all which I hereby return the interrogatories, deposition, commission, and agreement of the solicitors, and papers in the testimony referred to the said honorable court.

JAMES A. POAGE, Commissioner.

(*Interrogatories and Cross-interrogatories to L. D. Hill.*)

The United States of America, District of Texas.

Fall term, 1854, at Austin.

HENRY SHELDON & Co.
vs.
THOMAS C. MOORE and JAMES NICHOLSON. } In Chancery.

Interrogatories to be exhibited to L. D. Hill, witness residing in the county of Travis, State of Texas, to be produced, sworn, and examined in a certain cause now depending and at issue in the District Court of the United States for the District of Texas, at Austin, in chancery, wherein Henry Sheldon, Nelson Clements, and Edward A. Sheldon are complainants, and James Nicholson, and Rebecca H. Nicholson, his wife, and Thomas C. Moore are defendants, on the part of complainants, and in their behalf.

First. Are you or not acquainted with the parties to this suit, or any and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant James Nicholson to the defendant Thos. C. Moore, about the summer of the year 1851? If so, state the amount of the goods so sold. Where did the defendants reside at that time? Where did you reside?

Third. What was the general reputation of the said Nicholson in the community where he lived, as to solvency and pecuniary situation, previous to and at the time of said sale, and what has it been since?

Fourth. Did you or not ever hear the defendant Moore make any statement of his knowledge of the pecuniary condition, solvency, insolvency, or failing circumstances, or indebtedness of said Nicholson, at the time of said sale?

Fourth. State whether or not you were present or in the room at the time the transfers or deeds were drawn up from Nicholson to Moore. Was Moore present at the time or any part of the time? Was it in the day or night time? Please state whether or not you heard the said Moore at that time, or at any time previous to said sale, or within six thereafter, make any statement of the condition, or any statement of his knowledge of the pecuniary condition,

solvency, insolvency, indebtedness, or failing circumstances of said Nicholson at the time of said sale. Or whether or not you heard any other person and what person make any statement to or in the presence of said Moore, relative to the pecuniary condition, solvency, insolvency, indebtedness, or failing circumstances of said Nicholson? If so, state all of said conversations or statements as near as you can.

HAMILTON & CHANDLER,
Sol's for Conpl'ts.

Cross-interrogatories to L. D. Hill.

Cross-interrogatory first. If in answer to the 4th direct interrogatory you say that about the time Nicholson sold Moore a stock of goods, he, Moore, made any statements about Nicholson's solvency, then say if he, Moore, did not say that Nicholson owed him; and that his, Moore's, first object was to secure the debt. And if he spoke in regard to the pecuniary condition of Nicholson, did he speak from rumor or from his personal knowledge?

Cross-interrogatory second. If you say you were present at the time the transfer or sale was made, then say if an account of stock was not taken; and say at what prices were the goods charged. What was the condition of those goods? How long had they been on hand? How had they been handled and how culled? What was their value compared with New York cost? What was the possibility of retailing them off at cost, after paying expenses, rents, &c.? To do so, would it not have been absolutely necesary to replenish the stock? Give your opinions with your reasons.

S. C. BLAUTON,
I. A. & GEO. W. PASCHAL,
Sol's pro Def'ts.

Agreed that the answers to these interrogatories may be taken upon the originals without commission upon the original interrogatories, with the same effect as though the case was at issue; the examination to be taken before Thomas H. Duval or W. P. de Normandie, Commissioners.

Austin, 10th June, 1854. GEO. W. PASCHAL,
Sol. pro Def'ts.

(*Deposition of L. D. Hill.*)

The United States of America, District of Texas, at Austin.

Be it remembered, that on this, the eighteenth day of November, in the year of our Lord one thousand eight hundred and fifty-four, I, William P. de Normandie, a commissioner duly appointed by the District Court of the United States for the District of Texas aforesaid, under and by virtue of an agreement between the parties in a certain cause now depending and undetermined in the District Court of the United States for the District of Texas, at Austin, in Chan-

cery, wherein Henry Sheldon, Nelson Clements, and Edward A. Sheldon are complainants, and James Nicholson and Rebecca H. Nicholson, his wife, and Thomas C. Moore are defendants, did, at the request of the complainants, call and cause to be and personally appear before me, at my office, in the city of Austin, in said State and District of Texas, Lafayette D. Hill, of the county of Travis, in said State, to testify and the truth to say on the part of complainants.

And the said Lafayette D. Hill, being of sound mind and of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, was carefully examined by me, and did thereupon depose and say, in answer to the original interrogatories, as follows; that is to say—

To the first interrogatory, he says: I am acquainted with Thomas C. Moore and James Nicholson, not with the complainants.

To the 2d interrogatory, he says: I have no distinct recollection at this time of any sale of goods by Nicholson to Moore, though it was generally understood that Moore had purchased Nicholson's stock. I do not know the amount said to be so sold. The defendants, Moore and Nicholson, both resided in Bastrop. I also resided in Bastrop.

To the third interrogatory, he says: At the time Moore took possession of said goods Nicholson was generally understood to be insolvent, until that time he was considered solvent, since then he has been considered insolvent.

To the 4th interrogatory, he says: I have no recollection of hearing Moore make any statement in relation to the pecuniary condition of Nicholson at or about that time, or of his indebtedness. I was in the same room with Moore and Nicholson while they were transacting business and having papers of some kind drawn up, but do not know what they were, or their contents, of my own knowledge. Moore was present; it was in the daytime. I may have heard Moore make statements in regard to the pecuniary condition of Nicholson at that time as it was a subject of general conversation, but have no distinct recollection of what any person said. I do not recollect hearing any person say anything to Moore in regard to Nicholson's pecuniary condition.

To the first cross-interrogatory, he says. I have said that I have no recollection of hearing Moore make any statement about Nicholson's solvency. I do not know of the indebtedness of Nicholson's to Moore.

To the 2d cross-interrogatory, he says. I do not know whether an account of stock was taken. Before Moore took possession of the goods they had been pretty well culled. I do not know their value compared with New York cost. I think they may have been sold for cost, as I purchased before Moore took possession and saved myself from any loss. I paid 20 per cent. above New York cost.

L. D. HILL.

Sworn to and subscribed before me this 18th day of November, A. D. 1854.

W. P. DE NORMANDIE,
U. S. Commissioner for the District of Texas.

And I, William P. De Normandie, the commissioner aforesaid, hereby certify, that, on the day and year first before mentioned, I was attended by the said witness, L. D. Hill, at my office, in the city of Austin; and, thereupon, the above depositions were taken and reduced to writing by me in the presence of said witness, and from his statements; and, after carefully reading the same to said witness, he subscribed his name thereto as above written. I have retained the said deposition in my possession for the purpose of sealing the same, and placing it in the Clerk's Office of the District Court of the U. S. for the District of Texas, at Austin.

Witness my hand and seal, as commissioner, at Austin, the 18th day of November, A. D. 1854.

[SEAL.] W. P. DE NORMANDIE,
U. S. Commissioner.

And thereupon, afterwards, to wit, on the trial of said cause, at the November term of said court, in the year of our Lord one thousand eight hundred and fifty-five, the following copy of a judgment was read, in evidence, in the words and of the tenor following, to wit:—

(*Copy—Judgment.*)

In District Court, May 26th, 1853.

JAMES NICHOLSON AND WIFE
vs.
JOHN HEARN, J. D. SCOTT, et al.

In this cause this day came the parties by their attorneys, and agree that the following shall be the judgment of the court in this case, the injunction granted by the court, enjoining the sale of farm lots Nos. 65, 62, and 70, shall be made perpetual, and the same is hereby perpetual by judgment of the court. And it is further ordered that the defendant, Thomas C. Moore, make and execute to the plaintiff, Rebecca H. Nicholson, full and complete titles to the said lots, Nos. 65, 62, and 70, in accordance with his agreement. And it is further ordered, adjudged, and decreed, that the undivided half of fractional lot No. 4, shall be sold by the sheriff of Bastrop County for cash to the highest bidder to satisfy the claim of the defendant, John D. Scott, against the said James Nicholson. And it is further ordered, adjudged, and decreed, that the defendant, John D. Scott, have and recover of the plaintiff, James Nicholson, the costs of suit in this behalf expended, for which execution may issue.

S. C. BLAUTON, Att'y for Plaintiff.
W. LARKINS.

State of Texas, County of Bastrop.

I, H. S. Morgan, Clerk pro tem. of the District Court of Bastrop County, certify that the foregoing is a true copy of the judgment in the case of James Nicholson and Wife *vs.* John Hearn, John D. Scott, et al., as found in the minutes of said court at its Spring term, A. D. 1853.

Attest: H. S. Morgan, Clerk pro tem. District Court, Bastrop County, with official seal affixed at office in the town of
[SEAL.] Bastrop, December 15th, A. D. 1855.

H. S. MORGAN, Cl'k P. T. D. C. C. B.

And thereupon, afterwards, to wit, on the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and fifty-five, the court here rendered judgment and decree in this cause, in the words and of the tenor following, to wit:—

(*Decree.*)

HENRY SHELDON & Co., NELSON CLEMENTS, EDWARD A. SHELDON, Complainants,
vs.
JAMES NICHOLSON, THOMAS C. MOORE, REBECCA H. NICHOLSON, Defendants.

No. 1.
In Chancery.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, that as to Rebecca H. Nicholson, the bill be dismissed.

It is further ordered, adjudged, and decreed, that the sale of the stock of goods, wares, and merchandise sold by Nicholson on the 5th of July, A. D. 1851, was fraudulent, and intended to delay, hinder, and defraud his creditors, and, therefore, the same is annulled and set aside.

It is further ordered, adjudged, and decreed, that the said Rebecca H. Nicholson, recover her costs.

(Signed) JOHN C. WATROUS.

It is, therefore, ordered that the complainants have and recover of and from the said defendants, James Nicholson and Thomas C. Moore, all costs in this behalf expended, for which execution may issue.

United States of America.

In District Court of the United States for the Western District of Texas, holding sessions at Austin, and holding and exercising the powers and jurisdiction of a Circuit Court for said District. The Honorable Thomas H. Duval, being Judge thereof, Wm. C. Young, U. S. Marshal, and Matthew Hopkins, Clerk, in the foregoing entitled cause, ss.

HENRY SHELDON, NELSON CLEMENTS, and EDWARD A. SHELDON, Complainants, vs. JAMES NICHOLSON, THOMAS C. MOORE and REBECCA H. NICHOLSON, Defendants. — No. 1. Chancery.

In vacation, to wit, August 9th, A. D. 1859.

And afterwards, at the clerk's office of the United States District Court for the Western District of Texas, having and exercising the powers and jurisdiction of a Circuit Court of the United States, holding sessions at Austin, in said District, the Honorable Thomas H. Duval being Judge thereof, and Matthew Hopkins, Clerk, retaining the records, and the court exercising the powers held and exercised by the former Judge, came the complainants, by their solicitors, Hamilton and Chandler, on the ninth day of August, A. D. 1859, and as complainants in error filed their bond for writ of error, which is endorsed in words, to wit:—

HENRY SHELDON, NELSON CLEMENTS, and EDWARD A. SHELDON, Pl'ffs in Error, vs. JAMES NICHOLSON, REBECCA H. NICHOLSON, and THOMAS C. MOORE, Def'ts in Error. — No. 1. Chancery.

(*Bond for Writ of Error.*)

Bond for Writ of Error, Filed, Aug. 9th, 1859.
MATTHEW HOPKINS, Clerk.

Which bond is in the words, and of the terms and tenor following, to wit:—

(*Bond for Writ of Error.*)

Know all men by these presents, that we, Henry Sheldon, Nelson Clements, and Edward A. Sheldon, of the State of New York, and F. W. Chandler, of the State of Texas, are held and firmly bound unto James Nicholson and Thomas C. Moore, in the full and just sum of three hundred dollars, to be paid to the said obligees, their certain attorney, executors, administrators, or assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this ninth day of August, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas, lately, at a term of the District Court of the United States for the District of Texas, holding and exercising circuit powers, in a suit pending in said court, wherein the said Henry Sheldon, Nelson Clements, and Edward A. Sheldon were plaintiffs, and the said obligees were defendants, and numbered one (1) upon

the chancery docket of said court, judgment was rendered against the said Henry Sheldon, Nelson Clements, and Edward A. Sheldon, and the said Henry Sheldon, Nelson Clements, and Edward A. Sheldon have obtained a writ of error and filed a copy thereof in the clerk's office of said court, to reverse the judgment in the aforesaid suit, and also a citation directed to the said obligees, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, on the first Monday of December next.

Now, the condition of the above obligation is such, that if the said Henry Sheldon, Nelson Clements, and Edward A. Sheldon shall prosecute their writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

HENRY SHELDON, [SEAL.]
NELSON CLEMENTS, [SEAL.]
EDWARD A. SHELDON. [SEAL.]

By their agent and attorney, F. W. Chandler.
F. W. CHANDLER. [SEAL.]

The foregoing bond is approved by me.
T. H. DUVAL, U. S. Dist. Judge.

And therewith on the same day was lodged the writ of error, which is endorsed in United States District Court, holding sessions at Austin, West. District of Texas.

(*Writ of Error.*)

HENRY SHELDON, NELSON CLEMENTS, and EDWARD A. SHELDON,
Pl'ffs in error,
vs.
JAMES NICHOLSON, REBECCA H. NICHOLSON, and THOMAS C. MOORE,
Def'ts in error.

Filed for attestation, Aug. 9th, 1859.
MATTHEW HOPKINS, Clerk.

And which writ of error is in the words and terms following, to wit:—

United States of America, ss.

The President of the United States, to the Honorable the Judge of the District Court of the United States for the Western District of Texas, holding sessions at Austin, and having and exercising Circuit Court powers for said district, greeting:—

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, between Henry Sheldon, Nelson Clements, and Edward A. Sheldon, complainants, against James Nicholson, Rebecca H. Nicholson, and

Thomas C. Moore, who are defendants, a manifest error *error* hath happened to the great damage of said Henry A. Sheldon, Nelson Clements, and Edward A. Sheldon, plaintiffs in error, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the ninth day of August, the year of our Lord one thousand eight hundred and fifty-nine.

Allowed by THOS. H. DUVAL,
U. S. Dist. Judge, West. Dist. Texas.

Attest ninth day of August, A. D. 1859, and seal of court.
[SEAL.] MATTHEW HOPKINS, Clerk.

(*Of Copy of Writ of Error.*)

And therewith was filed in the clerk's office copy of the aforesaid writ of error, in words and terms of the precise tenor as the aforesaid, to which reference is made and endorsed. Copy of writ of error lodged in the clerk's office, in pursuance of the statutes of the United States in such case made and provided, for the above named James Nicholson, Rebecca H. Nicholson and Thomas C. Moore, defendants in error. HALE, HAMILTON & CHANDLER,
Sol's for Compl'ts in Error.

And at the same time, to wit, on the ninth day of August, A. D. 1859, the aforesaid sol's filed the citation in error, endorsed U. S. Dist. Court., West'n Dist. Texas, Austin.

HENRY SHELDON, NELSON CLEMENTS and EDWARD A. SHELDON, pl'ffs in error,
vs.
JAMES NICHOLSON, REBECCA H. NICHOLSON and THOMAS C. MOORE, def'ts in error.

Citation in error filed August 9th, A. D. 1859.
MATTHEW HOPKINS, Clerk.

And which citation in error is in words to wit:—

United States of America.

The President of the United States to James Nicholson, Rebecca

H. Nicholson and Thomas C. Moore: You are hereby cited and admonished to appear at the next term of the Supreme Court of the United States, to be held at Washington on the first Monday of December next, to show cause, if any there be, why the judgment rendered in your favor by the District Court of the United States for the District of Texas, in a certain cause or suit, there formerly depending between Henry Sheldon, Nelson Clements and Edward A. Sheldon as plaintiffs, and you as defendants, and numbered one upon the chancery docket of said court at Austin, should not be reversed, and speedy justice be done to the parties in that behalf, in pursuance of a writ of error sued out by the said Henry Sheldon, Nelson Clements and Edward A. Sheldon, of which a copy has been filed in the District Court of the United States for the Western District of Texas, at Austin.

Witness the Honorable Thomas H. Duval, the Judge of the District Court of the United States for the Western District of Texas, this ninth day of August, in the year of our Lord one thousand eight hundred and fifty-nine.

[SEAL.]

THOS. H. DUVAL,
U. S. Dist. Judge.

Witness my hand and seal of court, at Austin, Aug. 9th, 1859.

[SEAL.] MATTHEW HOPKINS, Clerk.

And the Marshal's Returns were endorsed thereon in words to wit:

Came to hand August 18th, 1859, and executed on the 20th day of August, A. D. 1859, by handing to the within named defendants in error, James Nicholson and Rebecca H. Nicholson, in person, true copies of this writ, certified as such by the Clerk of the U. S. Dist. Court, West. Dist. Texas, at Austin.

WM. C. YOUNG, U. S. M. W. D. T.
By JOHN HEARN, Special Deputy.

And on the 26th day of August, 1859, I served Thomas C. Moore, one of the within named defendants in error, in person, with a true copy of this citation in error, certified as such by the U. S. Dist. Clerk, West. Dist. Texas, at Austin.

WM. C. YOUNG, U. S. M. W. D. T.
W. K. WHITE, Dep'y U. S. M.

Marshal's Fees.

Mil. to Bastrop and La Grange, 75 m., @ 6,		$4.50
Serving 3 writs,	$2.00,	6.00
		$10.50

And afterwards, to wit, on the 23d day of November, A. D. 1859, there was filed in the clerk's office the following agreement of sols., complainants and defendants in error, endorsed:—

HENRY SHELDON et al.
vs.
NICHOLSON et al.
} In Chancery.

Filed 23d day of Nov., 1859.

MATTHEW HOPKINS, Clerk.

And which agreement is in words to wit:—

HENRY SHELDON, NELSON CLEMENTS and EDWARD A. SHELDON, complainants,
vs.
JAMES NICHOLSON, REBECCA H. NICHOLSON and THOMAS C. MOORE, defendants.

We the undersigned, solicitors of complainants and defendants in the foregoing entitled cause, agree that the plaintiffs in error may assign the errors at the Supreme Court at Washington after the record is filed.

W. G. HALL & F. W. CHANDLER,
Att'ys and Sol's for Pl'ffs in Error.

J. A. & GEO. W. PASCHAL,
Sol's pro Def'ts.

The United States of America, Western District of Texas, at Austin, to wit:—

I, Matthew Hopkins, Clerk of the District Court of the United States for the Western District of Texas, at Austin, certify the foregoing one hundred and ninety-four pages to be a true and perfect transcript of the record and all the proceedings had in case numbered one in chancery, wherein Henry Sheldon, Nelson Clements, and Edward A. Sheldon are complainants, and James Nicholson, Rebecca H. Nicholson and Thomas C. Moore are defendants.

In testimony whereof I have hereunto set my hand and the impress of the seal of court, as well as the original seal of said court for the district of Texas, at Austin, this twenty-fourth day of November, A. D. 1859.

[SEAL.]

[SEAL.]

MATTHEW HOPKINS, Clerk.

Filed 7th November, 1859.

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Schell	Knight et al	2165.
Stanton et al	Ins. Dept. Miss.	2197.
Tate	Carney	927.
Tide Water Co.	Lee	962.
Thomson	Roberts et al	1053.
Thompson	Holton	1298.
Thomas et al	Martin et al	1405.
Tracy et	Holcombe	1980.
U. States	Palmer	71.
" "	Chiana et al	125.
" "	Hernandez	628.
" "	Billings et al	652.
" "	Miranda et	1201.
" "	Castro et al	1209.

U. States	Sprigg & ac	1389.
Union St. Ship Co.	S. G. & Val. Nutson	1496.
U. States	Enright	2081.
" "	Easton	2167.
" "	Wilson	2204.
Van Reeder	Chandler	713.
Vigel	Taylor	1012.
Walton	Fyfe & ac	169.
Watterston	Noble	552.
Windsor & ac	Molloy	667.
Wash. Alex. & G. Town D. P. Co.	Sickles	776.
Welch & ac	Sampson & ac	899.
Warner	Clements	1306.
Wiggins & ac	Gray & ac	1324.
Washburn	Day & ac	1693
Wheeler	Felbit & ac	1711.
Williamson	Snydam	1938.

Wilson	U. States	2204.

SUPREME COURT OF THE UNITED STATES.

No. 7 ORIGINAL DOCKET.

DECEMBER TERM, 1860.

Ex parte: In the matter of the COMMONWEALTH OF KENTUCKY, one of the United States of America, by BERIAH MAGOFFIN, Governor and the Executive authority thereof, Petitioner,
vs.
WILLIAM DENNISON, Governor of the State of Ohio.

On petition for a mandamus, or for a rule on William Dennison, governor of Ohio, to show cause why a mandamus should not be issued by this court, commanding him to cause Willis Lago, a fugitive from justice, to be delivered up to be removed to the State of Kentucky, having jurisdiction of the crime with which he is charged.

Mr. Thomas B. Monroe, jr., having read in open court the petition filed herein, and also the exhibits filed with said petition, and having moved the court for a writ of mandamus, or for a rule to show cause, pursuant to the terms of said petition, it is thereupon now here considered and ordered by this court, that the said motion be and the same is hereby set down for argument on this day three weeks, to wit, on Friday, the eleventh day of January, 1861; and is is further ordered, that the clerk of this court do forthwith send a copy of this order, and of the petition and exhibits herein, to be served on his excellency William Dennison, governor of Ohio.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, "the Commonwealth of Kentucky, one of the United States of America, by Beriah Magoffin, governor, and the executive authority thereof," respectfully represents:

That on the day of , 1851, an act was passed by the general assembly of the Commonwealth of Kentucky, and approved by the governor, which took effect and became the law of

the State on the first of July, 1852, and from that date has continued to be, and is still in force and effect, both in whole and in part, in the figures and words following, to wit:

"§ 1. If any free person, not having lawful or in good faith a color of claim thereto, shall steal, or shall seduce or entice a slave to leave his owner or possessor; or if he shall make, or furnish, or aid or advise in the making or furnishing a forged or false pass, or deed of emancipation, or other writing purporting to liberate a slave; or if in any manner he aid or assist a slave to make his escape, or to attempt to make his escape from such owner or possessor, he shall be confined in the penitentiary for a period of not less than two nor more than twenty years.

"§ 2. A free person convicted of an attempt to persuade or entice away a slave from the service of his master, or owner, or the person in possession of the slave, or if convicted of the attempt to persuade or induce, by any means, a slave to run away from his master, or owner, or person in possession of him, shall be confined in the penitentiary for a period not less than two years nor more than five years." As fully appears by reference to chap. 43, art. 5, secs. 1 and 2 of "Revised Statutes of Kentucky."

Under and by virtue of said act, the grand jury of Woodford county, in said Commonwealth of Kentucky, by L. A. Berry, foreman, at the October term, 1859, of the Woodford circuit court, returned to said court an indictment against Willis Lago, in the words and figures following, to wit:

Woodford Circuit Court.

THE COMMONWEALTH OF KENTUCKY
against
WILLIS LAGO, free man of color.

The grand jury of Woodford county, in the name and by the authority of the Commonwealth of Kentucky, accuse Willis Lago, free man of color, of the crime of assisting slave to escape, &c., committed as follows, namely: the said Willis Lago, free man of color, on the 4th day of October, 1859, in the county aforesaid, not having *having* lawful claim, and not having any color of claim thereto, did seduce and entice Charlotte, a slave, the property of C. W. Nuckols, to leave her owner and possessor, and did aid and assist said slave in an attempt to make her escape from her said owner and possessor, against the peace and dignity of the Commonwealth of Kentucky.

W. S. DOWNEY,
Com. Att'y.

On the back of said indictment is the following endorsement:

"A true bill, L. A. Berry, foreman. Returned by grand jury, October term, 1859."

A copy whereof, regularly attested, is annexed hereto and aske to be read as part hereof—Appendix "B."

Whereby said Willis Lago was charged, by the indictment of the grand jury of Woodford county, with having committed a crime under the laws of Kentucky, viz: The crime of enticing, seducing, aiding and assisting a slave to leave her owner and possessor, and of aiding and assisting a slave in an attempt to make her escape from her owner and possessor. And, after the commission of said crime, Willis Lago aforesaid escaped and fled from the State of Kentucky to the State of Ohio, where he was found.

Your petitioner further represents that, on the 10th day of February, 1890, Beriah Magoffin, governor of the Commonwealth of Kentucky, and then and there being the executive authority of the State of Kentucky, did, from the executive office of said State, make demand upon William Dennison, then and there being the governor and executive authority of the State of Ohio, one of the United States of America, for the person of said Willis Lago, as a fugitive from justice, he, said Lago, having fled from Kentucky after the commission of said crime, and being found in the State of Ohio, to be delivered up and removed to the State of Kentucky, having jurisdiction of the crime; which demand was accompanied by a copy of the indictment hereinbefore referred to and set out, certified as authentic, by the said executive authority of the State of Kentucky.

Your petitioner further represents, that the governor of Kentucky appointed Wm. S. Manson agent of said executive authority of the State of Kentucky, to receive the said fugitive Willis Lago; which will appear from an entry upon the executive journal of the governor of Kentucky, in the following letters and figures, to wit:

"FEBRUARY 10*th*, 1860.

"The governor issued a requisition upon Ohio for Willis Lago (free man of color,) charged, by indictment in the circuit court of Woodford county, with enticing a slave to escape, and appointed Wm. S. Manson agent to make the demand."

A copy whereof, regularly attested, is annexed hereto, Appendix "C."

Your petitioner further represents, that said demand, with a copy of said indictment, duly certified as authentic as aforesaid, was produced by said agent, Wm. S. Manson, to said Wm. Dennison, the governor and executive authority of the State of Ohio, the receipt whereof is by him acknowledged; and that the said Wm. Dennison, governor of Ohio, did, upon the 31st day of May, 1860, refuse to cause said fugitive, Willis Lago, to be arrested and delivered up to said agent, Wm. S. Manson, as will appear by his letter, which is in the words and figures following, to wit:

STATE OF OHIO, EXECUTIVE DEPARTMENT,
Columbus, May 31, 1860.

His Excellency BERIAH MAGOFFIN,
Governor of Kentucky.

SIR: Some time since a requisition of your excellency was presented to me for the surrender to your agent, of Willis Lago, described as being a "fugitive from the justice" of your State, charged by indictment, an authenticated copy of which accompanied the requisition, with the offence against the laws of Kentucky, of having "seduced and enticed Charlotte, a slave, the property of C. W. Nuckols, to leave her owner and possessor, and of aiding and assisting said slave in an attempt to make her escape from her said owner and possessor."

My absence from home, and that of the attorney general of this State, to whom I submitted the papers for his official examination, and other causes referred to in the accompanying copy of the opinion of that officer, have delayed my reply to your requisition.

I have now the honor of communicating to your excellency this opinion of the attorney general, which embodies substantially the reasons which have compelled me to decline to surrender Lago in compliance with your requisition.

With sentiments of the highest regard,
I have the honor to be your obed't serv't,
W. DENNISON.

The original letter of said Dennison, together with the accompanying paper, are hereto annexed as part hereof, Appendix "D."

To this refusal Beriah Magoffin, governor of Kentucky, replied, as appears by a copy of his letter annexed hereto, and prayed to be made part hereof, Appendix "E."

Your petitioner further represents, that Wm. Dennison, governor of Ohio, made no reply to the last aforesaid letter, but still fails and refuses, in violation of his legal obligation under the Constitution and laws of the United States, and of the rights and dignity of the Commonwealth of Kentucky, to cause said fugitive from justice, Willis Lago, to be arrested and delivered to said agent, Wm. S. Manson, to be removed to the State of Kentucky, having jurisdiction of the crime with which he is charged.

And your petitioner would further represent, that the executive authority of the State Kentucky has in all respects complied with the act of Congress providing for the arrest and delivery up of fugitives from justice, on the demand made upon the governor of Ohio for the person of Willis Lago; but the said Wm. Dennison, governor as aforesaid, has refused and failed, and still refuses to cause said Lago to be arrested and delivered up as required by said act.

Wherefore your petitioner would respectfully pray, that a man-

damus issue from this honorable court, ag't s'd Wm. Dennison, compelling to deliver up said Lago, or for a rule to show cause why said mandamus should not issue, and for all proper relief.

CRITTENDEN, MARSHALL, and STEVENSON,
For Com'th of Ky.
THO. B. MONROE, JR.

Supreme Court U. S., December Term, 1860.

Sworn to in open court, this 21st Dec'r, 1860, by Thomas B. Monroe, jr.

Test: WM. THOS. CARROLL,
Clerk of Sup. C't U. S.

Appendix B.

Woodford Circuit Court.

THE COMMONWEALTH OF KENTUCKY
against
WILLIS LAGO, free man of color.

The grand jury of Woodford county, in the name and by the authority of the Commonwealth of Kentucky, accuse Willis Lago, free man of color, of the crime of assisting slave to escape, &c., committed as follows, viz: the said Willis Lago, free man of color, on the 4th day of October, 1859, in the county aforesaid, not having *having* lawful claim, and not having any color of claim thereto, did seduce and entice Charlotte, a slave, the property of C. W. Nuckols, to leave her owner and possessor, and did aid and assist said slave in an attempt to make her escape from her said owner and possessor, against the peace and dignity of the Commonwealth of Kentucky.

W. S. DOWNEY,
Com. Att'y.

Witnesses: W. H. LUSBY,
C. W. NUCKOLS,
BENJ. BLINCOE,
JOHN TAYLOR,
CHARLOTTE and GRANVILLE, slaves of C. W. Nuckols,
HUBBARD, slave of P. J. Railey.

(Endorsed on the back:)

A true bill.

L. A. BERRY, *Foreman.*

Returned by grand jury, Octo. term, 1859.

STATE OF KENTUCKY, *Woodford Circuit Court.*

I, Swift Darneal, clerk of the Woodford circuit court, do hereby certify that the foregoing is a true copy of the indictment against

Willis Lago, (a free man of color,) returned by the grand jury at the October term, 1859, of said court.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at office in town of Versailles, this 10th day of February, 1860.

[SEAL.]

SWIFT DARNEAL,
Clk Woodford Cir. Court.

STATE OF KENTUCKY, *Woodford Circuit Court.*

I, William C. Goodloe, sole and presiding judge of the court for the circuit aforesaid, do hereby certify that Swift Darneal, whose name and signature appears to the foregoing certificate, is now, and was at the time of signing the same, clerk of our said court, and as such full faith and credit is due and ought to be given to all of his official acts, and that his said certificate and attestation is in due form of law.

Given under my hand, this 10th day of February, 1860.

W. C. GOODLOE.

Appendix C.

FEBRUARY 10th, 1860.

The governor issued a requisition upon Ohio for Willis Lago, (free man of color,) charged by indictment in the circuit court of Woodford county, with enticing a slave to escape, and appointed Wm. S. Manson, agent, to make the demand.

COMMONWEALTH OF KENTUCKY,
Office of Secretary of State.

I, Thomas B. Monroe, jr., secretary of State, hereby certify that the foregoing is a true copy of an entry upon the executive journal of Gov. Beriah Magoffin, as deposited in this office.

Given under my hand and seal of office, this 12th December, 1860.

[SEAL.] THO. B. MONROE, JR.

D.

STATE OF OHIO, EXECUTIVE DEPARTMENT,
Columbus, May 31, 1860.

His Excellency BERIAH MAGOFFIN,
Governor of Kentucky:

SIR: Some time since a requisition of your excellency was presented to me for the surrender to your agent, of Willis Lago, described as being a "fugitive from the justice" of your State, charged by indictment, an authenticated copy of which accompanied the requisition, with the offence against the laws of Kentucky, of having "seduced and enticed Charlotte, a slave, the property of C. W. *Nichols*, to leave her owner and possessor, and of aiding and assisting said slave in an attempt to make her escape from her said owner and possessor."

My absence from home, and that of the attorney general of this State, to whom I submitted the papers for his official examination, and other causes referred to in the accompanying copy of the opinion of that officer, have delayed my reply to your requisition.

I have now the honor of communicating to your excellency this opinion of the attorney general, which embodies substantially the reasons that have compelled me to decline to surrender Lago, in compliance with your requisition.

With sentiments of the highest respect,
I have the honor to be, your ob't serv't,
W. DENNISON.

OFFICE OF THE ATTORNEY GENERAL,
Columbus, Ohio, 14 *April*, 1860.

SIR: The requisition, with its accompanying documents, made upon you by the governor of Kentucky, for the surrender of Willis Lago, described to be a "fugitive from the justice of the laws of" that State, may, for all present purpose, be regarded as sufficiently complying with the provisions of the Federal Constitution, and the act of Congress touching the extradition of fugitives from justice, if the alleged offence charged against Lago can be considered as either "treason, felony or other crime," within the fair scope of these provisions.

Attached to the requisition is an authenticated copy of the indictment on which the demand is predicated, and this—omitting merely the title of the case, and the venue—is in the words and figures following:

"The grand jury of Woodford county, in the name and by the authority of the Commonwealth of Kentucky, accuse Willis Lago, free man of color, of the crime of assisting slave to escape, &c., committed as follows, viz: the said Willis Lago, free man of color, on the 4th day of October, 1859, in the county aforesaid, not having *having* lawful claim, and not having any color of claim thereto, did seduce and entice Charlotte, a slave, the property of C. W. *Nuctols*, to leave her owner and possessor, and did aid and assist said slave in an attempt to make her escape from her said owner and possessor, against the peace and dignity of the Commonwealth of Kentucky."

This indictment, it must be admitted, is quite inartificially framed, and it might be found difficult to vindicate its validity according to the rules of criminal pleading which obtain in our own courts, or wheresoever else the common law prevails. This objection, however, if it have any force, loses its importance in the presence of other considerations, which, in my judgment, must control the fate of the application.

The act of which Lago is thus accused by the grand jury of Woodford county certainly is not "treason," according to any code

of any country, and just as certainly is not "felony," or any other crime, under the laws of this State, or by the common law. On the other hand, the laws of Kentucky do denounce this act as a "crime," and the question is thus presented whether, under the federal Constitution, one State is under an obligation to surrender its citizens or residents to any other State, on the charge that they have committed an offence not known to the laws of the former; nor affecting the public safety; nor regarded as malum in se by the general judgment and conscience of civilized nations.

This question must, in my opinion, be resolved against the existence of any such obligation. There are many acts—such as the creation of nuisances, selling vinous or spirituous liquors, horse racing, trespassing on public lands, keeping tavern without license, permitting dogs to run at large—declared by the laws of most of the States to be crimes, for the commission of which the offender is visited with fine or imprisonment, or with both; and yet it will not be insisted that the power of extradition, as defined by the Constitution, applies to these or the like offences. Obviously a line must be somewhere drawn, distinguishing offences which do, from offences which do not, fall within the scope of this power. The right rule, in my opinion, is that which holds the power to be limited to such acts as constitute either treason or felony by the common law as that stood when the Constitution was adopted, or which are regarded as crimes by the usages and laws of all civilized nations. This rule is sufficiently vindicated by the consideration that no other has ever been suggested, at once so easy of application *of* to all cases, so just to the several States, and so consistent in its operation with the rights and security of the citizen.

The application of this rule is decisive against the demand now urged for the surrender of Lago. The offence charged against him does not rank among those upon which the Constitutional provision was intended to operate, and you have therefore no authority to comply with the requisition made upon you by the governor of Kentucky.

Entertaining no doubt as to the rightfulness of this conclusion, I am highly gratified in being able to fortify it by the authority of my learned and eminent predecessor who first filled this office, and who officially advised the governor of that day, that in a case substantially similar to the one now presented, he ought not to issue his warrant of extradition. Other authority, if needed, may be found in the fact that this rule is conformable to the ancient and settled usage of the State.

To guard against possible misapprehension, let me add, that the power of extradition is not to be exercised, as of course, in every case which may apparently fall within the rule here asserted. While it is limited to these cases, the very nature of the power is such that its exercise even under this limitation must always be

guided by a sound legal discretion, applying itself to the particular circumstances of each case as it shall be presented.

The communication, in a formal manner, of the preceding opinion, has been long but unavoidably deferred by causes of which you are fully apprized. Though this delay is greatly to be regretted, it can have had no prejudicial effect, as the agent appointed by the governor of Kentucky to receive Lago was long since officially, though informally, advised that no case had been presented which would warrant his extradition.

Very respectfully, your ob't servant,

C. P. WOLCOTT.

To the GOVERNOR.

E.

EXECUTIVE OFFICE,
Frankfort, Ky., June 4th, 1860.

His Excellency W. DENNISON, Governor of Ohio:

SIR: Your reply, dated 31st ult., to my requisition upon you made on the 10th of February last, in which you refuse to surrender a fugitive from the justice of this State, charged by indictment with the crime of having seduced and enticed a slave to leave her owner and possessor, and of aiding and assisting said slave in an attempt to make her escape from her said owner and possessor, is before me.

I am not as much surprised at the delay in making your reply as I have been at the apparently conflicting reasons which are given by you and the attorney general of Ohio therefor; nor at this so much as at the reasons embodied in the "opinion" of the latter officer, upon which you base your declination to surrender the fugitive.

You state that your absence from home, and that of the attorney general, delayed your response. The attorney states that the agent appointed by me was "long since officially, though informally, advised that no case had been presented which would warrant the extradition" of the fugitive. The opinion of the attorney bears date 14th April last. Your note to me adopting it bears date nearly six weeks afterwards; and although it appears that long before the 14th April, it had been "officially" announced that you would not make the surrender, you hesitated to inform me of the fact until the 31st of May. And wherefore? May I not, in charity, indulge the hope, that it was because of your reluctance to violate the Constitution of the United States, and the act of Congress passed to carry it into effect, both of which imperatively demand that the fugitive shall be surrendered?

The Constitution (article 4, sec. 2) declares, that "a person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on de-

mand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime." The act of Congress is equally imperative. How then do you avoid the solemn duty which they both impose?

Your attorney general says that the requisition made upon you, with its accompanying documents, are "regarded as sufficiently complying with the provisions of the federal Constitution and the act of Congress touching the extradition of fugitives from justice," and he admits that "the laws of Kentucky do denounce this act as a crime." Had not the legislature of Ky. the right to declare the offence alluded to a felony? Do you contend that the act is unconstitutional? But the refusal to surrender is based upon the ground that it is not a crime under the laws of Ohio or the common law; and you, through your attorney, go on to say that "the right rule is that which holds the power of extradition to be limited to such acts as constitute either treason or felony by the common law, as that stood when the Constitution was adopted, or which are regarded as crimes by the usages and laws of all civilized nations." It is added that "the application of this rule is decisive against the demand" for the surrender of the fugitive in question. And this rule is again limited by the statement that "the power of extradition is not to be exercised, as of course, in every case which may apparently fall within the rule here asserted." This qualification would seem to have been added from a superabundance of caution.

The rule adopted by you, it will be seen at a glance, would forbid the surrender of a fugitive from justice charged with crime in almost numberless instances, although the crime be well defined upon the statute-book of the State where committed, because, forsooth, it was not a crime at common law when the Constitution was adopted, or not recognised as such by the usages and laws of all civilized nations! For example, certain injuries and obstructions to telegraph lines and railroads are crimes by our statute, and perhaps by yours. Were they crimes at common law when the Constitution was formed? Obtaining money by false pretences and other description of frauds are now made crimes by the statutes of some of the States. Were they crimes at common law at the adoption of the Constitution, or is it certain that the laws and usages of "all civilized nations," even now, denounce them as crimes or felonies? Look over your own statute-book and you will doubtless see many crimes defined, which were not so at the origin of our common Government, or which the judgment or laws of all civilized nations will approve. Do you issue no requisition for the surrender of a fugitive from the justice of your laws, without first ascertaining whether the crime with which he stands charged was a crime at common law at the adoption of the Constitution, or is made such by the laws of all civilized countries?

Your attorney general, and yourself, adopting his opinion, say, that the indictment which accompanied my requisition upon you "is quite inartificially framed, and it might be found difficult to vindicate its validity according to the rules of criminal pleading which obtain in our own courts, [i. e. the courts of Ohio,] or wheresoever else the common law prevails."

It would seem, from this attempt at criticism, that not only are the laws of Kentucky, which do not conflict with the Constitution of the U. S., defining crimes, to be annulled by the laws of Ohio and the ancient common law, but likewise the mode of procedure prescribed by our Code of practice and pleading for our courts of justice.

You are doubtless aware that many of our sister States, as well as Kentucky, have simplified their system of practice and pleading by their own statute laws; and the criticism now made upon this indictment, instead of advancing with these judicial reforms, would lead us back into the labyrinth of black-letter times.

But to return to the main question: shall the constitutional provision which I have quoted, and the act of Congress, be obeyed? Shall the rights of a sovereign State of the confederacy, her laws, and her institutions, be respected?

Judge Story, in his commentaries on the Constitution, remarks, that "however the point may be as to foreign nations, it cannot be questioned that it is of vital importance to the public administration of criminal justice, and the security of the respective States, that criminals who have committed crimes therein should not find an asylum in other States, but should be surrendered up for trial and punishment. It is a power most salutary in its general operation, by discouraging crimes, and cutting off the chances of escape from punishment. It will promote harmony and good feelings among the States; and it will increase the general sense of the blessings of the national government."

But it is needless to quote authorities. Our claim is founded upon the binding obligations of a plainly written Constitution, and an equally unambiguous enactment by Congress passed in pursuance thereof.

I shall not stop to enter into the discussion as to our right of property in slaves. That is a question not open for debate. It has been too long recognised, and by too many sanctions, to admit, at this day, of controversy, and especially by those who are ready upon the merest pretexts to deny us our constitutional rights pertaining to that description of property. It is sufficient to say that the federal Constitution was the work of delegates whose almost entire constituency were citizens of slave States. It may, in truth, be said that the Constitution was the work of slaveholders; that their wisdom, moderation, and prudence gave it to us. Non-slaveholding States were then the exception, not the rule. The organic

law of the nation recognised by its provisions, in unmistakable terms, the right to slave property, some of which provisions were designed for its protection.

With regard to the argument that some of the States have declared to be crimes, offences which appear trivial to others, it is only necessary to remark, that it is for each State to settle and determine for itself, and by its own laws, when not in conflict with the Constitution of the United States, what acts shall or shall not be considered criminal when committed within its own limits and jurisdiction; and no violator of such laws should be suffered to escape with impunity because officers whose business it is to execute, and not to enact the laws, may think them too severe.

According to the rule laid down by you, all that would be necessary for a State, wishing to refuse to surrender fugitives from justice, and become an asylum for the criminals of other States, to do, would be to repeal its criminal laws; for, as they must govern the question, in your view of it, there could be then no crime to punish, and no fugitive to return to answer the demands of violated law.

The attorney general announces, that the rule adopted by him and yourself is "conformable to the ancient and settled usage of the State" of Ohio.

I am not aware how ancient the rule may be with you, but I am satisfied it was not in vogue when Kentuckians ran with alacrity to the rescue of your people against the assaults of British invaders, and their more savage allies. And it cannot be that ingratitude is a characteristic of your constituents. It is to their "sober second thought" that I would appeal, not to grant us a favor or confer a privilege, but simply not to give us a denial of our constitutional rights. And that appeal I would make in your own language, when on a recent occasion you addressed your fellow-citizens of Kentucky, Tennessee, and Indiana, at your own capital. Speaking for the people of Kentucky, as you then spoke for the people of Ohio, I would declare with emphasis:

"Believe me, gentlemen, the people of Ohio ask no peculiar privileges under the Constitution. They cheerfully recognise as belonging to their brethren all the rights they claim for themselves. The exclusive right of the people of every State to establish and maintain undisturbed their domestic institutions, lies at the foundation of the national confederacy. Without its recognition there could have been no union of the States. Without its continued recognition, as the basis of all national legislation, and for the regulation of the intercourse between the people of the States, in theory and in fact, there can be no practical union of the States. The sovereignty of the States in all matters not clearly delegated to the Federal Government must be maintained." (Columbus Speech, Jan., 1859.)

This was the solemn pledge given to us on our visit last winter

to Ohio by you as the Executive of the State; and be assured, nothing less will satisfy the people of Kentucky. Nothing less should be conceded by the people of Ohio. I cannot convey to you my surprise and disappointment when I read the reasons given for your refusal to surrender the fugitive Lago, in direct violation, I conceive, of the sentiments and principles laid down in the above extract from your speech, upon the occasion alluded to. According to your own admissions and positions, so distinctly stated, that violation involves a dissolution of the Union.

I have the honor to be, your ob't serv't,

B. MAGOFFIN.

P. S.—Under a sense of duty to the people I have the honor to represent, and in view of the large number of slaves annually enticed away from their owners by emissaries sent from Ohio, whom you refuse to surrender, I shall cause this correspondence to be published.

B. M.